



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, बुधवार, 8 सितम्बर, 2010 / 17 भाद्रपद, 1932

हिमाचल प्रदेश सरकार

लोक निर्माण विभाग

अधिसूचना

शिमला-2, 7 सितम्बर, 2010

सं0 पी0बी0डब्ल्यू0 (बी0)एफ(5)198 / 2009.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु गांव छुपाडी, तहसील रोहडू, जिला शिमला में रोहडू-पारसा-छुपाडी सड़क के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव 'एतद द्वारा यह घोषित किया जाता है कि निम्नलिखित विवरणी में वर्णित भूमि उपर्युक्त प्रयोजन के लिए अपेक्षित है ।

2. यह घोषणा, भूमि अर्जन अधिनियम, 1894 की धारा-6 के उपबन्धों के अधीन इससे सम्बन्धित सभी व्यक्तियों को सूचना हेतु की जाती है तथा उक्त अधिनियम की धारा-7 के अधीन भू-अर्जन समाहर्ता लोक निर्माण विभाग (शिमला क्षेत्र) शिमला को उक्त भूमि के अर्जन करने के आदेश लेने का एतद द्वारा निर्देश दिया जाता है।

3. भूमि रेखांक का निरीक्षण भू-अर्जन समाहर्ता, लोक निर्माण विभाग (शिमला क्षेत्र) शिमला के कार्यालय में किया जा सकता है।

विवरणी

जिला	तहसील	गांव	खसरा न0	रकवा (है0) में
शिमला	रोहडू	छुपाडी	801 / 1	0-04-05
			814 / 1	0-03-98
कुल किता = 2				0-08-03

आदेश द्वारा,
हस्तांतर
प्रधान सचिव (लोक निर्माण)।

OFFICE OF THE DISTRICT MAGISTRATE MANDI, DISTRICT MANDI (H.P.)

NOTIFICATION

Mandi, the 4th September, 2010

No. MND-Peshi-RA/2010-36678-84.—In the supersession of this office notification No. 24-MND-MLC-21/87 Vol.-II 5258-63 dated 13-3-91 and subsequent notification No. SR/RA/2005-15503-07 dated 16-5-2005, 21-6-2005, 12-5-2006 and 16-6-2006, the movement/ plying of vehicles on link road from N.H. 21 near HPPWD Rest House, Sundernagar to Dental College, Sundernagar-Bahot-Bari is allowed in the following manner with immediate effect:-

1. All type of Ambulances and Milk Vans are allowed on this portion of road.
2. All two wheelers, three wheelers and four wheelers/LMVS owned by the residents on this link road are also allowed to enter this portion of road subject to the permission/permit from Sub-Divisional Magistrate, Sundernagar.

By order,
Sd/-
*District Magistrate,
Mandi, District Mandi.*

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171 001**NOTIFICATION***Shimla, the 6th August, 2010*

No.HHC/Admn.16 (13)74-VII.—Hon'ble the Chief Justice, in exercise of the powers vested in him U/S 139(b) of the Code of Civil Procedure, 1908, U/S 297(b) of the Code of Criminal Procedure, 1973 and Rule 5(vi) of the H.P. Oath Commissioners (Appointment & Control) Rules, 2007 has been pleased to appoint Shri Shiv Kumar Jagota, Advocate, of Shimla, as Oath Commissioner at Shimla for a period of two years, with effect from 23.8.2010 for administering oaths and affirmations on affidavits to the deponents, under the aforesaid Codes and Rules.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171 001**NOTIFICATION***Shimla, the 12th August, 2010*

No.HHC/GAZ/14-261/2003.—Hon'ble the Chief Justice has been pleased to grant 11 days' earned leave w.e.f. 25.8.2010 to 4.9.2010 with permission to prefix gazetted holiday falling on 24.8.2010 and to suffix Sunday falling on 5.9.2010 in favour of Smt. Parveen Chauhan, Civil Judge (Sr. Division)-cum-JMIC(I), Mandi, H.P.

Certified that Smt. Parveen Chauhan is likely to join the same post and at the same station from where she proceeds on leave, after expiry of the above period of leave.

Also certified that Smt. Parveen Chauhan would have continued to hold the post of Civil Judge (Sr. Division)-cum-JMIC(I), Mandi, H.P. but for her proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171 001**NOTIFICATION***Shimla, the 6th June, 2009*

No.HHC/GAZ/14-260/2003.—Hon'ble the Chief Justice has been pleased to grant 11 days' earned leave w.e.f. 25.8.2010 to 4.9.2010 with permission to prefix gazetted holiday falling on 24.8.2010 and to suffix Sunday falling on 5.9.2010 in favour of Shri Rajesh Chauhan, Civil Judge (Jr. Division)-cum-JMIC(II), Mandi, H.P.

Certified that Shri Rajesh Chauhan is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Shri Rajesh Chauhan would have continued to hold the post of Civil Judge (Jr. Division)-cum-JMIC(II), Mandi, H.P. but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA - 171 001

NOTIFICATION

Shimla, the 12th August, 2010

No.HHC/Admn.6 (23)/74-XIII.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 1.26 of H.P. Financial Rules, 1971, Volume-I, has been pleased to declare the Civil Judge (Jr. Division)-cum-JMIC(III), Mandi as Drawing and Disbursing Officer in respect of the Court of Civil Judge (Jr. Division)-cum-JMIC(II), Mandi and also the Controlling Officer for the purpose of T.A. etc. in respect of Class-II to IV establishments attached to the aforesaid Court under head “2014-Administration of Justice” during the leave period of Shri Rajesh Chauhan, Civil Judge (Jr. Division)-cum-JMIC(II), Mandi *w.e.f.* 25.8.2010 to 4.9.2010 with permission to prefix gazetted holiday falling on 24.8.2010 and to suffix Sunday falling on 5.9.2010 or till he returns from leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA - 171 001

NOTIFICATION

Shimla the 12th August, 2010

No.HHC/Admn.6 (23)/74-XIII.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 1.26 of H.P. Financial Rules, 1971, Volume-I, has been pleased to declare the Civil Judge (Jr. Division)-cum-JMIC(III), Mandi as Drawing and Disbursing Officer in respect of the Court of Civil Judge (Jr. Division)-cum-JMIC(I), Mandi and also the Controlling Officer for the purpose of T.A. etc. in respect of Class-II to IV establishments attached to the aforesaid Court under head “2014-Administration of Justice” during the leave period of Smt. Parveen Chauhan, Civil Judge (Jr. Division)-cum-JMIC(I), Mandi *w.e.f.* 25.8.2010 to 4.9.2010 with permission to prefix gazetted holiday falling on 24.8.2010 and to suffix Sunday falling on 5.9.2010 or till she returns from leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171 001**NOTIFICATION***Shimla, the 13th August, 2010*

No.HHC/Admn.16(24)75-III.—Hon'ble the Chief Justice, in exercise of the powers vested in him U/S 139(b) of the Code of Civil Procedure, 1908, U/S 297(b) of the Code of Criminal Procedure, 1973 and Rule 5(vi) of the H.P. Oath Commissioners (Appointment & Control) Rules, 2007 has been pleased to appoint Shri Surinder Pal Singh, Advocate, Una, as Oath Commissioner at Una, H.P. for a period of two years, with immediate effect, for administering oaths and affirmations on affidavits to the deponents, under the aforesaid Codes and Rules.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171 001**NOTIFICATION***Shimla, the 17th August, 2010*

No. HHC/GAZ/14-244/99.—Hon'ble the Chief Justice has been pleased to grant ex post facto sanction of 5 days' earned leave *w.e.f.* 9.8.2010 to 13.8.2010 with permission to suffix second Saturday and Sunday fell on 14.8.2010 and 15.8.2010 in favour of Shri Jia Lal Azad, Civil Judge (Sr. Division)-cum-JMIC, Jodhpur, H.P.

Certified that Shri Jia Lal Azad has joined the same post and at the same station from where he proceeded on leave, after expiry of the above period of leave.

Also certified that Shri Jia Lal Azad would have continued to hold the post of Civil Judge (Sr. Division)-cum-JMIC, Jodhpur, H.P. but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171 001**NOTIFICATION***Shimla, the 23rd August, 2010*

No.HHC/GAZ/14-71/76-III.—Hon'ble the Chief Justice has been pleased to grant ex post facto sanction of 5 days' commuted leave *w.e.f.* 9.8.2010 to 13.8.2010 with permission to suffix 14.8.2010 and 15.8.2010 being second Saturday and Sunday in favour of Shri Shamsher Singh, District & Sessions Judge, Una.

Certified that Shri Shamsher Singh has joined the same post and at the same station from where he proceeded on leave, after expiry of the above period of leave.

Also certified that Shri Shamsher Singh would have continued to hold the post of District & Sessions Judge, Una, but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

TOURISM & CIVIL AVIATION DEPARTMENT

NOTIFICATION

Shimla-2, the 26th August, 2010

No. TSM-A (4)-3/2009.—In exercise of the powers vested in her under Chapter-3, Section-17 of the Himachal Pradesh Tourism Development & Registration Act, 2002 (Act No.15 of 2002) the Governor, Himachal Pradesh is pleased to establish a Council to be known as Tourism Development Council for Dalhousie-Khajjiar, District Chamba (HP) for the purpose of this Act with immediate effect.

2. The council shall consist of following members:-

1. Official Members:

1. Deputy Commissioner, District Chamba.	<i>Chairman.</i>
2. ADC, Chamba & in his absence SDM (Civil), Chamba.	<i>Vice Chairman.</i>
3. Divisional Forest Officer, Chamba.	<i>Member.</i>
4. Executive Engineer, HPPWD, Chamba.	<i>Member.</i>
5. Executive Engineer (I&PH), Chamba.	<i>Member.</i>
6. Executive Officer, Municipal Council, Dalhousie.	<i>Member.</i>
7. Chairman, SADA, Khajjiar, District Chamba.	<i>Member.</i>
8. District Tourism Development Officer Chamba.	<i>Ex Officio Member Secretary.</i>

2. Non Official Members (Representing Hotel Industry):

1. Shri Ashok Mahajan,
Owner Hotel Dalhousie Heights,
Dalhousie, District Chamba.
2. Shri Dharam Paul,
Owner, Hotel Himgiri, Dalhousie,
District Chamba.
3. Shri Sanjay Kumar,
Crown Tour & Travels Dalhousie,
District Chamba.
4. Shri Prem Kumar,
Owner Lovely Restaurant, Dalhousie,
District Chamba.
5. Shri Sanjay Kumar,
Owner, Hotel Himdhara Dalhousie,
District Chamba.

3. Non Official Members from Tourism Industry:

1. Shri Jaram Singh Thakur,
Chairman, Beopar Mandal, Khajjiar
Village Panjyara, P.O. Khajjiar, Tehsil & Distt. Chamba.
2. Shri Harinder Guleria,
Grand Way Travel,
GPO Gandhi Chowk, Dalhousie, Distt. Chamba.
3. Shri Ranbir Thakur,
Glory Hotel, Bus Stand Dalhousie, District Chamba (HP).
4. Shri Rajinder Shingari,
Kumar Hotel, Bus Stand, Dalhousie,
District Chamba (HP).

3. The non official members shall be paid such allowances as may be notified by the Government from time to time.

4. Committee shall meet at least once in a quarter and inform the Tourism Development Board about the decision taken by the Council.

By order,
MANISHA NANDA,
Principal Secretary (Tourism & CA).

LABOUR AND EMPLOYMENT DEPARTMENT
(AWARDS)

Title

Ref.47 of 2009 Sh. Parmod Kumar & Ors. V/s M/S Jagan Industries, Kala Amb.
District Sirmour, H.P.

27.7.2010.

Present: None for the petitioners.
 Respondent not served. As per report which goes to show that the factory stands closed.

For 24.6.2010, when the case was fixed for the services of the parties, the petitioners have been served through one of the petitioners namely Shri Pramod Kumar but despite the service, he had failed to appear on the fixed date i.e. 24.6.2010.

Since, the reference, which has been made to this Court is required to be answered, on the said date i.e 24.6.2010, again it was ordered that notices to be issued to the petitioners as well as respondent for today i.e 27.7.2010.

Even, today, neither the petitioners including Pramod Kumar who had been duly served for 24.6.2010, are present, in person, nor through their Counsel/Authorized Representative. Faced with such a situation that despite having been served, the petitioners are not appearing before this Court, I have been left with no other alternative but to answer this reference on the basis of material, which is available on the file.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the verbal termination of services of S/Shri Parmod Kumar, Surat Singh, Gina Chand, Varinder Kumar, Hem Chand, Nirmal Singh, Kamal Singh, Raj Pal and Ghyanshyam C/o Shri Parmod Kumar S/o Shri Sadhu Ram VPO Sainwala, Tehsil Nahan District Sirmour, HP by the Management of M/s Jagan Industries, Village Moginand, Nahan road, Kala Amb, District Sirmour, HP w.e.f. 24.1.2008 in violation of Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits including compensation etc. the above workers are entitled to from the above management?"

From the reference, it appears that the petitioners, as per their names mentioned therein, have been in the employment of the respondent company M/s Jagan Industries, Village Moginand, Nahan

road, Kala Amb, District Sirmour, HP and that w.e.f. 24.1.2008, their services were terminated in violation of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act), in an illegal and unjustified manner.

It was required of the petitioners to have filed a statement of claim before this Court alleging therein specifically as to how and what in manner, their services had been terminated by the respondent company w.e.f. 24.1.2008 in contravention of the provisions of the Act and further, for what service benefits, they were entitled to. For their failure to have filed statement of claim and further that they did not care to appear before this Court despite having been served through one of them i.e. namely Pramod Kumar, I have no other option but to hold that on the basis of material which is available before this Court, the contention of the petitioners, as is reflected from the reference, that their services had been terminated in contravention of the provisions of the Act is not proved. Consequently, for what has been stated and observed above, my answer to this reference is accordingly against the petitioners. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced.

27.7.2010.

Ch 27/7/10
Presiding Judge,
Labour Court, Shimla
Camp at Nahan.

IN THE COURT OF A.S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA CAMP AT NAHAN

Ref. No. 8 of 2009
Instituted on 17.2.2009.
Decided on. 27.7.2010.

Rajinder Singh S/o Shri Puran Chand Sharma R/o Kaulanwala Bhood, Tehsil Nahan, District Sirmour, HP.
..Petitioner.

VS.

The Executive Engineer, IPH Division Nahan, District Sirmour, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri A.K Gupta, Advocate.

For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether the contention of Shri Rajinder Sharma S/o Shri Puran Chand Sharma workman that he worked in I &PH Division, Nahan, District Sirmour and he was terminated without notice and compensation is proper and justified? If yes, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from he above employer?

2. In nutshell, the case of the petitioner is that he had been engaged as daily wage beldar in the year, 1995 and worked as such upto 1997, when his services were disengaged by the respondent in violation of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act). It is further averred that other persons, who were serving, alongwith him, were retained besides engaging new persons. Before terminating his services, no notice was given to him. Since, his services were disengaged in contravention of the provisions of the Act, he deserves to be reinstated, in service, with all the consequential benefits.

3. The claim of the petitioner has been contested on having raised various preliminary objections including maintainability and estoppel. On merits, it has been asserted that the petitioner was initially engaged as daily wage beldar, in the month of September, 1995 and worked only for 64 days, in the calendar year, 1995. In the calendar year, 1996, he only worked for 22 days and thereafter abandoned the job, on his own. Further, he did not turn up to do job, even after several verbal intimations. Now, after the lapse of more than 12 years, he has come up before this Court, on the basis of fallacious pleas. It is further maintained that seniority list is prepared only of those daily wagers, who complete 240 days in a calendar year. Since, the petitioner had not completed 240 days, his name was not incorporated in the seniority list. The petitioner abandoned his job, in the month of July, 1996 and did not turn up for work despite the fact that muster roll was issued for the month of August, 1996 for the same strength i.e twelve beldars. Other allegations denied.

4. No rejoinder was filed. Pleadings of the parties gave rise to the following issues which were struck on 15.12.2009.

1. Whether the contention of the petitioner that he had worked in I&PH Division, Nahan and his services were terminated without any notice and compensation is proper and justified, as alleged? OPP.

2. If issue no.1 is proved, to what amount of back wages, seniority, past service benefits and compensation, the petitioner is entitled to? OPP.

3. Whether the claim is not maintainable? OPR.

4. Whether the claim is stale as alleged? OPR.

5. Relief.

5. I have heard the learned counsel for the petitioner and Ld. DDA for respondent and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No. 1 No.

Issue No. 2 Becomes redundant.

Issue No. 3 No.

Issue No. 4 No.

Relief. Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

7. At the very outset, I would like to point out that in the statement of claim, the petitioner has not mentioned that in which month of 1997, his services were disengaged by the respondent. Even, in the reference, which has been made to this Court, no such date/year has been mentioned in which, the services of the petitioner were allegedly terminated. However, when regard is given to the statement of petitioner (PW-1), it is highlighted that in the month of December, 1994, he had been engaged as daily wage beldar and worked till December, 1997, continuously, and thereafter, his services were disengaged without notice or compensation.

8. On the contrary, from the statement of Shri Ram Krishan (RW-1), it is borne out that the petitioner had been engaged as daily wage beldar in the month of September, 1995 and worked as such for only 64 days, in the said calendar year and in the year, 1996, he worked only for 22 days. Thereafter, he abandoned the job, on his own. The department had never disengaged/terminated him.

9. Ex. RB, is the muster roll, which had been issued for the month of July, 1996. Its perusal goes to show that the petitioner had worked for 22 days in the said month. Ex. RC, is the muster roll for the month of August, 1996, which had also been issued for the same strength of beldars i.e 12. Its perusal goes to show that the petitioner had not worked in the said month i.e from 1.8.1996 to 31.8.1996. At this stage, I would like to point out that initial onus was upon the petitioner to have proved that he had worked for 240 days during the twelve calendar months from the date of his termination. This fact he could have proved by his own statement and also from the documentary evidence. It is to be noted that in his statement (PW-1) he has stated to have worked for 240 days in the twelve calendar months preceding his termination. In fact, he has deposed contrary to his plea, as taken in the statement of claim wherein, he has alleged to have been engaged as daily wage beldar in the year, 1995 but before this Court stated to have been engaged in the month of December, 1994. Undoubtedly, he has stated that neither any notice was issued to him nor any compensation paid by the respondent but this requirement, as per section 25F of the Act, was to be met with only if the petitioner had proved, on record, that before his alleged termination, he had completed 240 days. From the muster roll Ex. RB, it is abundantly clear that the petitioner had only worked upto 31.7.1996. This evidence which has been led by the respondent has gone unchallenged for want of counter documentary evidence/proof, brought by the petitioner. In these circumstances, the contention of the petitioner that his services had been terminated in the year, 1997 also becomes false. It has been held in *2009 (120) FLR 1007 an Civil Appeal no. 4468 of 2005 of Hon'ble Supreme Court incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others* that:

“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”

13. Similarly, it has been held by the Hon'ble Apex Court in *AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh* that:-

“Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

10. Shri Ram Krishan (RW-2), has specifically stated that in the year, 1996, the petitioner had worked for only 22 days and thereafter abandoned his job. His such version gets support from the muster roll Ex. RB & Ex. RC. He has further stated that the petitioner had been asked verbally to resume his job but of no avail. Even, for the month of August, 1996, muster roll had been issued for the same strength i.e 12 number of beldars as it was in the month of July, 1996. His such version further goes to support that the petitioner had abandoned the job, on his own. Had his services been terminated, as is the case of the petitioner, the muster roll for the month of August, 1996 would not have been for the same strength i.e 12 workers as it was in the month of July, 1996, when the petitioner had worked for 22 days, as is evident from muster roll, Ex. RB.

11. The petitioner has also alleged his termination to be in contravention of the provisions of section 25G of the Act, on the plea that juniors to him have been retained/engaged by the respondent. This plea of the petitioner is of no avail particularly when this fact is considered that, on the record, it has been duly proved that he had abandoned the job after July, 1996 and also that his assertion that he worked till December, 1997 has not stood the test of truth, on the face of documentary as well as oral evidence, led by the respondent. It is true that the Ld. Counsel for the petitioner has relied upon Ex. PA, in order to show that persons were engaged by the respondent after the alleged termination of the

petitioner but from this document, no benefit can be taken by the petitioner, when he had abandoned his job and that too without completing 240 days in any calendar year. In these circumstances, I have no hesitation in holding that the petitioner has miserably failed to prove that his services had been terminated in contravention of the provisions of the Act, i.e section 25F, 25G & 25H. Accordingly, my answer to this issue is in "No".

Issue No. 2 :

12. In view of my findings, on issue no.1, above, this issue becomes redundant.

Issue No. 3 :

13. Since the petitioner has filed the statement of claim in consequence of the reference having been made to this Court and further that the reference is required to be answered, I am of the view that the claim of the petitioner is maintainable. Accordingly, by holding it to be maintainable, my answer to this issue is in "No".

Issue No. 4 :

14. Undoubtedly, for the respondent, it has been urged that the claim of the petitioner is not legally maintainable for the reason that it had been made after more than 12 years but I am of the considered view that since, this court is required to answer the reference, on this plea of delay and latches, this Court cannot hold the claim of the petitioner to be not maintainable on the ground of delay and latches. By holding so, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioners is dismissed. Consequently, the reference stands answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 27th July, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla
Camp at Nahan.

IN THE COURT OF A. S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref No. 12 of 2009.
Instituted on 16.3.2009.
Decided on 7.7.2010.

Gurcharan Singh S/o Shri Kaura Ram R/o village Sekadi, P.O Jaghon, Tehsil Nalagarh, District Solan, HP.
..Petitioner.

VS.

The Senior Executive Engineer, Electrical Division, HPSEB Nalagarh, District Solan, HP.
..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.S Thakur, Advocate.

For respondent: Shri Chandan Goel, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Gurcharan Singh s/o Shri Kaura Ram, workman by the Senior Executive Engineer, Electrical Division, HPSEB Nalagarh, District Solan, HP, w.e.f. 25.12.2001 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to."

2. In nutshell, the case of the petitioner is that he was engaged as daily wage beldar on 26.7.1993 and continued to remain as such till 20.8.1999, when his services were terminated without complying with the mandatory provisions of Industrial Disputes Act, 1947 (hereinafter referred Act). Since, his repeated requests/representations failed to bring the desired result, he was left with no other alternative but to file an OA in the State Administrative Tribunal, which was caused to be registered as OA no. 12 of 2000. When the same came up for final hearing, on 5.10.2001, the Tribunal quashed his oral termination and the respondent was directed to reengage him, at the same place, from where his services had been terminated, with continuity in service. In pursuance to the order dated 5.10.2001, he reported for duty with the respondent and started performing his duties. Even, he had not completed one month of his duties, a notice of termination of his service dated 23.11.2001, effected from 25.12.2001, was issued. As per the provisions of clause 14 (2) of the HP State Electricity Board Industrial Establishment and Sanding Orders (hereinafter referred Standing Orders). Feeling aggrieved by the said notice, dated 23.11.2001, he again filed an OA (OA No.3158/2001), before the Administrative Tribunal but as per order dated 25.7.2006, it was dismissed, on the ground of jurisdiction. Thereafter, he raised a demand notice which resulted in making the present reference, to this Court. It is further averred that juniors to him have been regularized by the respondent. Since, his services have been terminated in contravention of the provisions of the Act, he deserves to be reinstated with all the consequential benefits.

3. Petition has been contested, on having raised various preliminary objections, including maintainability, limitation and also that the provisions of the Standing Orders are not applicable to HPSEB. On merits, it has been admitted that the petitioner had worked with the respondent upto 20.9.1999, but with breaks. He was never regular, in his duties and did not report for the work and remained absent. The respondent engaged his services, on the direction of State Tribunal as per order dated 5.10.2001. He was disengaged on 25.12.2001, by issuing a legal and valid notice vide order dated 23.11.2001 and thus, the respondent followed the rules and procedure because the work for which his services had been engaged, had came to an end. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 16.11.2009.

1. Whether the termination of services of Shri Gurcharan Singh petitioner by the senior Executive Engineer, Electrical Division, HPSEB Nalagarh, District Solan w.e.f. 25.12.2001 without complying with the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged? OPP.
2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to? OPP.
3. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 No

Issue No. 2 Becomes redundant.

Relief. Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

8. At the very out set, I would like to point out that, it is not the case of the petitioner that in any calendar year, from the date when his services were engaged by the respondent, he had completed 240 days. It is true that the contention of the petitioner is that, when his services had been terminated w.e.f. 20.8.1999, he filed an OA before the State Administrative Tribunal and that as per order dated 5.10.2001, he joined his duties but after giving a notice, his services were terminated vide order dated 23.11.2001. In order to bring his case within the ambit of section 25F of the Act, it was required of the petitioner to have alleged and proved that in the twelve calendar months preceding his termination, he had completed 240 days and that his services were terminated without notice and paying retrenchment compensation.

9. In the statement of petitioner (PW-1), it has not come that he had completed 240 days in every calendar year preceding his termination. In other words, the petitioner (PW-1) has not spoken even a signal word that he had completed 240 days in twelve calendar months preceding his termination. The mandays chart of the petitioner, which is Ex. RA, goes to show that in the year , 2001, he had worked for 51 days, in 2000, Nil, in 1999, 231 days, in 1998 196

days, in 1997, 20 days, in 1996, 180 days, in 1995, 228 days, in 1994, 208 days and in 1993, 54 days. This document makes it clear that the petitioner had not worked for 240 days, in any of the years. As per the reference, made to this Court, it has to be ascertained as to whether the termination of the services of the petitioner w.e.f. 25.12.2001, are in contravention of the provisions of the Act or not? Thus, the period of 240 days is required to be calculated in twelve calendar months preceding 24.12.2001, when his services stood terminated. The petitioner has failed to prove that in the twelve calendar months, from the date of his termination, he had completed 240 days. Thus, his termination cannot be said to be in contravention of the provisions of section 25F of the Act.

10. Another ground, which has been taken by the petitioner in order to challenge his termination, in contravention of the provisions of the Act, is that his juniors have been retained/engaged by the respondent. According to the petitioner (PW-1), his such juniors who have been continuing in service are S/Shri Gurdev Singh, Balvir Singh & other. The version of Shri Ajay Kumar Sharma (RW-1) is to this effect that no juniors, have been retained by the respondent. In the cross examination, he has stated that Ex. RPA bears the signatures of XEN. He denied that as per this document, juniors to the petitioner have been in service/job.

11. Undoubtedly, the petitioner has relied upon document, PRA in support of his contention that his juniors are still in service. However, the perusal of this document goes to show that Shri Gurdev Singh, had been engaged on 9.2.1983, Shri Balvir Singh, on 26.8.1982, Shri Ved Prakash, on 27.11.1989, Bhagat Ram, on 21.1.1990 and Shri Dila Ram, on 26.12.1986. As far as the petitioner is concerned, his services had been engaged w.e.f. 26th July, 1993. Thus, the aforesaid persons are senior to him and not junior. From this document, his contention that juniors to him have been retained/engaged by the respondent also fails. Thus, it is also not proved, on record that by violating the provisions of section 25G & H of the Act, the respondent has either engaged fresh hands or retained the services of the persons who are junior to the petitioner. Consequently, for my above discussion, I hold that the petitioner has failed to prove, on record, that his services have been terminated w.e.f. 25.12.2001 by the respondent without complying with the provisions of the Act. Thus, my answer to this issue is in "No".

Issue No. 2 :

12. In view of my above discussion on issue no.1, this issue becomes redundant.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 7th July, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA CAMP AT SOLAN

Ref No. 14 of 2008.
Instituted on 11.4.2008.
Decided on 9.7.2010.

Atter Singh S/o Shri Palak Ram R/o Village Katogra, P.O Radu Ghati, Tehsil Rajgarh, District Sirmour, HP.
..Petitioner.

VS.

The Executive Engineer, HPPWD (B&R) Division Rajgarh, District Sirmour, HP.
..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.
For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Atter Singh S/o Shri Palak Ram by the Executive Engineer, HPPWD (B&R) Division Rajgarh, District Sirmour w.e.f. 29.9.1991 as alleged by the workman, without complying the provisions of the Industrial disputes Act, 1947 is proper and justified? If not what relief of service benefits and amount of compensation, the aggrieved workman is entitled to?"

2. Briefly, the case of the petitioner is that during the year, 1978, he had been engaged as Black Smith by the respondent department and continued as such till 29.9.1991, when he was illegally removed from service, without any cogent reason and justification. In every year, he had completed 240 days. Before terminating his services, neither any notice nor compensation was paid to him. In order to challenge his illegal termination, he had approached the Administrative Tribunal, by filing OA no. 2089/1998 but the same had to be withdrawn for want of jurisdiction. It is further averred that juniors to him have been still retained by the respondent and that he is still unemployed. As his services were terminated in contravention of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act), he deserves to be reinstated with all the consequential benefits.

3. The Petition has been contested on having raised preliminary objections including maintainability and estoppel. On merits, it has been admitted that in the year, 1978, the services of the petitioner had been engaged but it has been specifically denied that his services were terminated on 20.9.1991. In fact, the petitioner had worked till August, 1988 and thereafter, he did not turn up and thus abandoned the job, on his own. It has also been denied that in each calendar year, he had completed 240 days. Since, the petitioner had left the job, on his own, the services of the juniors had to be retained. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 11.11.2008.

1. Whether the termination of services of petitioner by the Executive Engineer, HPPWD (B&R) Division Rajgarh, District Sirmour, HP w.e.f. 29.9.1991 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged? OPP.

2. If issue no.1 is proved to what relief of service benefits and amount of compensation, the petitioner is entitled to? OPP.

3. Whether the claim is bad for non-joinder of necessary party? OPR.

4. Whether the petitioner is stopped to file and maintain the petition due to his own acts, deeds and conduct as alleged? OPR.

5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 No.

Issue No. 2 becomes redundant.

Issue No. 3 No.

Issue No. 4 No.

Relief. Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

8. It has been specifically alleged by the petitioner that his services had been terminated on 29.9.1991, without notice and retrenchment compensation. The stand of the respondent is that the petitioner worked till August,

1988 and thereafter, did not turn up to do his job/work. The reference, which has been made to this Court is also regarding the validity of the termination of the petitioner w.e.f. 29.9.1991.

9. Now, when regard is given to the statement of the petitioner (PW-1), it is revealed that he had been engaged as Black Smith in Jan. 1978 and continued as such upto 31.8.1988, on which date his services were terminated without notice and payment of compensation. From his this statement, it is abundantly clear that he supports the defence version that he had continued in service till 31.8.1988 and not upto 29.9.1991. In these circumstances, the claim of the petitioner that his services had been terminated w.e.f. 29.9.1991 becomes totally false.

10. In order to seek the benefits of section 25F of the Act, the petitioner is required to prove that in the twelve calendar months preceding his termination, he had completed 240 days. This period had to be reckoned from 29.9.1991 and not from 31.8.1988 as is the version, made by the petitioner (PW-1), before this Court. It is to be noted that this Court has to answer the reference which has been made to it and as per the reference, the termination of the services of the petitioner are required to be ascertained as proper and justified w.e.f. 29.9.1991 and not w.e.f. 31.8.1988, which is the defence version and also the statement of the petitioner (PW-1) as made, on oath, before this Court.

11. Ex. RA is the mandays chart of the petitioner which as per Shri S.R Bhardwaj (RW-1), is correct as per the record. Its perusal goes to show that the petitioner had worked upon 31.8.1988. This document further makes it clear that the petitioner had not worked w.e.f. 9/1988 to 12/1988. Similarly, he had not worked in the years, 1989, 1990 and 1991 at all. In order to seek the benefit of section 25F of the Act, the petitioner is required to prove, on record, that in the twelve calendar months from the date of his termination i.e. 29.9.1991, he had completed 240 days. From the mandays chart, Ex. RA, it is not proved that preceding his termination, he had completed 240 days in the twelve calendar months preceding his termination. The respondent was required to issue notice and to pay retrenchment compensation, to him, only if he had proved that before his termination, he had completed 240 days in the twelve calendar months. Further, in the statement of Shri S.R Bhardwaj (RW-1), it has come that after August, 1988, the petitioner had not turned up for his work/job and that on 27.8.1988, he abandoned the same. His such version gets support from mandays chart, Ex. RA. At this stage, I may like to observe that had the petitioner challenged his termination w.e.f. 31.8.1988 to be illegal and unjustified for want of notice and retrenchment compensation, it was required of the respondent to have proved with more cogent and convincing evidence that on the said date (31.8.1988), the services of the petitioner had not been terminated/disengaged but, on his own, he left/abandoned the same. It appears that in order to cover his such lapse i.e. to have abandoned the job by not turning up after August, 1988, the petitioner came up with this plea that his services had been terminated on 29.9.1991 without notice and compensation but as stated above, his such plea becomes false on the face of his own deposition before this Court (PW-1) as well copy of mandays chart Ex. RA. In these circumstances, there was no necessity for the respondent to have issued notice to the petitioner to resume his duties. Thus, from the documentary as well as oral evidence, on record, it stands established that the services of the petitioner had not been disengaged/termination on 29.9.1991 but on the contrary, he had abandoned his job, on his own, w.e.f. 31.8.1988.

12. Another ground on which the petitioner has challenged his alleged termination to be illegal and unjustified is that his juniors are still in service with the respondent. While appearing in the witness box as PW-1, he has stated that one Shri Inder Pal, junior to him, is still working with the respondent. It has been explained by Shri S.R Bhardwaj (RW-1) that Inder Pal had been engaged in the month of August, 1990 when the petitioner had abandoned the job, in the month of August, 1988 (27.8.1988). As, on the record, it has been proved that the petitioner had abandoned his job, the engagement of said Inderpal, in the year, 1990, does not go to advance the cause of the petitioner, as far as the violation of the provisions of section 25G & H, are concerned. In case, the services of the petitioner had been terminated in the month of August, 1988, in that event, the respondent department was required to have issued him a notice to resume the job. I dis-agree with the Ld. AR for the petitioner that his (petitioner) services had been terminated in contravention of the provisions of section 25G & H of the Act. Consequently, for my above discussion, I hold that the petitioner has failed to prove that his services had been termination w.e.f. 29.9.1991 in contravention of the provisions of the Act and as such my answer to this issue is in "No".

Issue No. 2 :

13. Since while deciding issue no.1, I have already held that the services of the petitioner had not been terminated illegally, but he abandoned the job, on his own, hence, this issue becomes redundant.

Issue No. 3 :

14. Neither it has been made clear in the reply nor at the time of arguments, it could be explained as to why the claim of the petitioner is bad for non-joinder of necessary parties. When regard is given to the reference which has been made to this Court, I am of the considered view that the claim of the petitioner, which has been filed, consequent upon the reference, is not bad for non-joinder of necessary party. Thus, this issue is decided in negative.

Issue No. 4 :

15. It is true that the petitioner has alleged his termination w.e.f. 29.9.1991 to be illegal and unjustified for being in contravention of the provisions of the Act, but he has also made it clear that firstly, he had filed an OA before the State Administrative Tribunal, to challenge his such alleged termination which had to be withdrawn. On the file, there is a copy of order dated 21.10.2004 of the State Administrative Tribunal which goes to support his such contention. It appears that when he withdrew his OA, he raised an Industrial dispute and that when the same could not be reconciled, the appropriate government made a reference to this Court. Since, the reference made to this Court, is required to be answered, the petitioner cannot be said to be estopped from filing the claim before this Court. Thus, I hold that he is not estopped from filing the claim and my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 8th July, 2010 in the presence of parties counsels.

By order,
 A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla
Camp at Solan.

Ref.24/2010

2.7.2010

PRESIDENT BMS, OM BHAWAN V/S THE COMMISSIONER MUNCIPAL CORP, SHIMLA.

2.7.2010:-

Present:- Petitioner in person.

Ms Shashi Thakur, Senior Clerk for respondent.

It has been stated by the petitioner that already he has effected compromise with the respondent. To this effect his statement recorded separately.

On having considered his statement. I am satisfied that the matter stands already amicably settled between the parties. Resultantly, the reference which has been made to this Court stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

2.7.2010

Sd/-
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF A.S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No. 25 of 2008.
 Instituted on 28.4.2008.
 Decided on. 17.6.2010.

Budh Ram S/o Shri Ludhar Chand R/o Village Kutwa, P.O Nishani, Tehsil Nirmand, District Kullu, HP.
 ..Petitioner.

VS.

The Executive Engineer, HPSEB, Division Reckongpeo, District Kinnaur, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: None.

For respondent: Shri Chandan Goel, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the action of the employer i.e Executive Engineer, HPSEB, Division Reckongpeo, District Kinnaur, HP not to reengage workman Shri Budh Ram S/o Shri Ladar Chand in job, after his recovery from injury, who met with an accident while discharging duty as alleged by the workman, is proper and justified? If not, what relief of service benefits including back wages and seniority the aggrieved workman is entitled to?”

2. In nutshell, the case of the petitioner is that in the month of Jan. 2000, he had been engaged as daily wage beldar by the respondent department. During his service tenure, he worked to the best of his abilities and to the satisfaction of his superiors. Unfortunately, in the month of Feb., 2004, he met with an accident when performing his duties at Sub Division, Tapri, Division Reckongpeo. In critical condition, he had been referred to IGMC, Shimla by the staff of the respondent, who, at that time, were on duty at Sub Division, Tapri. Thus, the factum of the accident was in the notice of the respondent. Although, he was performing his duties with the respondent but they tried to remove all the evidence, to show that he was not even engaged during those days. In their reply, to the demand notice, the respondent had pleaded that the applicant was not working with them on 11.2.2004, when he came in contact with live wire and met with an accident. In connection with his treatment, he remained hospitalized for about five months. He had also put in more than 240 days and for this reason, his services could not have been terminated/dispensed with. Against the aforesaid backdrop, a prayer has been made for his reinstatement alongwith all the consequential benefits.

3. The claim of the petitioner has been contested on having raised various preliminary objections including maintainability and estoppel. On merits, it has been admitted that the petitioner had worked as daily wage beldar in HPSEB at Electric Sub Division, Tapri, District Kinnaur, for the period as shown in annexure RA-1 i.e Jan. 2000 to May, 2000 but it has been specifically denied that during the year, 2004, he had remained engaged by the respondent. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 10.6.2009.

1. Whether the action of the respondent not to reengage the petitioner in job after his recovery from injury, who met with an accident while discharging his duty is improper and unjustified as alleged?
OPP.

2. If issue no.1 is proved, to what relief of service benefits including back wages and seniority, the petitioner is entitled to?
OPP.

3. Whether the petition is not maintainable as alleged?
OPR.

4. Whether the petition is barred by limitation as alleged?
OPR.

5. Whether this court has no jurisdiction to entertain the claim petition as alleged?
OPR.

6. Whether the petitioner is estopped from filing the claim petition by his own act, deed, commission, omission and laches as alleged?
OPR.

7. Relief.

6. Besides having heard the learned counsel for the petitioner I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No. 1 No.

Issue No. 2 Becomes redundant.

Issue No. 3 No.

Issue No. 4 No.

Issue No. 5 No.

Issue No. 6 No.

Relief. Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

8. The contention of the petitioner is that on 11.2.2004, when he met with an accident, by coming in contact with live wire, he was in the employment of the respondent.

9. The defence version is to this effect that only during the period as mentioned in annexure RA-1, the petitioner had remained in the employment of the respondent and that in the year, 2004, he was not in its employment.

10. I may mention that although, the petitioner has alleged to have worked for 240 days with the respondent Board but he has not made it clear that during which period, he had completed 240 days with the respondent. In order to seek the benefit of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act), it was required of the petitioner to have specifically alleged that before his alleged disengagement/termination, he had completed 240 days in the preceding twelve calendar months. I may observe that the petitioner has not brought, on record, any such document which could go to show that on 11.2.2004, when the accident took place, he was in the service of the respondent and that in the twelve calendar months, he had completed 240 days. In the absence of such documentary proof/evidence and also that the petitioner has not stepped into the witness box, in support of his case, despite the fact that he had been afforded as many as six opportunities and for this reason, ultimately, his evidence had been closed by the order of this Court, on 17.7.2010, I have no hesitation in holding that he has failed to prove that his alleged disengagement/termination is unjustified and improper.

11. I may also point out that in order to get the benefit of section 25F of section 25G of the Act, the petitioner was duty bound to lead convincing documentary as well as oral evidence to prove that his services had been terminated in contravention of the provisions of the aforesaid sections. Consequently, my answer to this issue is in “No”.

Issue No. 2 :

12. In view of my findings on issue no.1 above, this issue becomes redundant.

Issue No. 3 :

13. Since the petitioner has filed his claim consequent upon the reference which has been made to this Court I am of the considered view that his such claim petition is maintainable. Accordingly, by holding it to be maintainable, my answer to this issue is in “No”.

Issue No. 4 :

14. In support of this issue, no evidence has been led by the respondent being a legal issue. It is well settled that there is no limitation under the I.D Act, 1947 as held by their lordship of ***Hon'ble Supreme Court as reported in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another.*** as under:-

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

In view of the above cited ruling, this petition is held not to be barred by limitation. Accordingly, this issue is answered in negative.

Issue No. 5 :

15. As the reference has been made to this Court by the appropriate government, it is required to be answered and for this reason, I hold that this Court has jurisdiction to entertain the claim of the petitioner. Thus, my answer to this issue is in “No”.

Issue No. 6 :

16. Undoubtedly, an objection has been taken by the respondent that the petitioner is estopped from filing the claim petition due to his own act, deed, commission, omission and latches but there is no substantive evidence, on record, to prove such plea. I may mention that since a reference which has been made to this Court is required to be answered, the claim of the petitioner cannot be dismissed for the reason that he is estopped from filing the same due to his act, deed, commission, omission and latches. Thus, my answer to this issue is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 17th July, 2010.

By order,
A. S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA CAMP AT SOLAN

Ref. No. 32 of 2005.
Instituted on 16.3.2005.
Decided on 9.7.2010.

Gopal Chand (now deceased) S/o Shri Surajmani ward No. 4 Nalagarh District Solan, HP, through his legal heirs.

- a. Smt. Sunita W/o late Shri Gopal Chand.
- b. Sanjay Kumar S/o late Shri Gopal Chand.
- c. Rohit Kuma S/o late Shri Gopal Chand.
- d. Kumar Sonia D/o late Shri Gopal Chand.
- e. Kumari Deepika D/o late Shri Gopal Chand.

..Petitioners.

VS.

The Executive Officer, Municipal Committee, Nalagarh, District Solan, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, AR.

For respondent: Shri P.N Bhanot, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Gopal Chand S/o Shri Suraj Mani by the Executive Officer, Municipal Committee, Nalagarh, District Solan, HP w.e.f. March, 1998 without conducting any domestic enquiry and complying the provisions of Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and compensation, Shri Gopal Chand is entitled to."

2. Before, I proceed further, it is pertinent to point out that Shri Gopal Chand, during his life time, had raised a demand notice and in consequence thereof, when the conciliation could not take place, between the parties, a reference, as aforesaid, was made to this Court by the appropriate government. When, notices were issued to the parties, by this Court, it was known that Shri Gopal Chand had died and for this reason, his LR's moved an application

under order 22 rule 3 read with section 151 CPC, which was allowed as per order dated 23.8.2008 and in consequence thereof, his LR's were ordered to be brought on record. In this way, the statement of claim was filed by late Shri Gopal Chand (hereinafter referred Deceased) through LR's.

3. Briefly, stated facts of the case are that the deceased had been engaged as Mate with the respondent in November, 1993, on daily wages, and that he continued as such till March, 1998, when his services were terminated orally, by lodging a false case, against him. In fact, his services had been terminated without issuing any notice and conducting domestic enquiry. In each calendar year, he had completed 240 days. When, he was acquitted, he made several representations to the E.O of the respondent but of no avail. Since, his services had been terminated illegally, he (deceased) deserves to be reinstated with all the consequential benefits.

3. Since, on 6.9.2005, none was present, on behalf of the respondent despite, valid service, it was proceeded against ex-parte. At this stage, I may further point out that although on 23.12.2008, Shri P.N Bhanot, Advocate joined the proceedings on behalf of the respondent but no steps were taken to get the ex parte order set aside. For this reason, the respondent did not file any reply to the statement of claim

4. Besides, having heard the learned counsel for the parties, I have also gone through the material on record.

5. According to Smt. Sunita who appeared into the witness box as PW-1 (Widow of deceased), the deceased had worked with the respondent from 1993 till March, 1998, when his services were terminated without any notice, charge sheet etc., by lodging a false FIR of theft, against him. Neither any charge sheet had been served nor any enquiry conducted. Before his termination, the deceased had completed 240 days in each calendar year as well as in twelve calendar months preceding his termination. The criminal case, against the deceased, was decided on 29.11.2002, as per which, he was acquitted vide judgment Ex. PA. After his acquittal, he had requested the respondent for reinstating him vide application, mark X but he was not allowed to resume his duties. On 13.5.2005, her husband (deceased) died. On compassionate grounds, she deserves to be given employment in place of her husband (deceased) along with all the consequential benefits. In the cross examination, she denied that her husband (deceased) had left the job, on his own.

6. The version of Smt. Sunita (PW-1) that the deceased had completed 240 days in twelve calendar months preceding his termination goes unchallenged/un-impeached. She had further supported this fact that in each calendar year, the deceased had completed 240 days. It is true that a criminal case had been registered against the deceased, as is evident from the photocopy of judgment dated 29.11.2002, Ex. PA, but from this judgment, it is quite clear that he (deceased) had been acquitted along with Surat Kumar Nayak & Smt. Sushila. Since, the deceased had completed 240 days in the twelve calendar months preceding his termination, it was required of the respondent to have issued him notice and to pay retrenchment compensation before terminating his services. In case, his services were required to be terminated, for his involvement in a theft which resulted in the registration of criminal case against him, even then, it was obligatory upon the respondent to have served a charge sheet upon the deceased in order to hold domestic enquiry, against him. In the instant case, the respondent had not conducted any enquiry against the deceased before terminating his services. Moreover, the Criminal Court (Ld. SDJM Nalagarh, District Solan, HP), acquitted the deceased as per judgment, photocopy of which is Ex. PA. This goes to show that the charge of the theft, against him (deceased) was not proved. In these circumstances, when there has been no domestic enquiry, got conducted against the deceased, and that his services were terminated without notice and payment of compensation, it was required of the respondent to have reinstated his services, when he was acquitted as per judgment dated 29.11.2002, Ex. PA. Thus, I have no hesitation in holding that the termination of the services of the deceased w.e.f. 3/1998 is illegal and unjustified.

7. Now, it is to be ascertained as to what service benefits the deceased is entitled to. Undoubtedly, Smt. Sunita (Widow of the deceased) had prayed that on compassionate grounds, she be given employment but her such prayer cannot be allowed because this court is only required to answer the reference which has been made to it. As per the reference, it is required to be ascertained as to whether the services of the deceased had been terminated in proper and justified manner or not.

8. It has already been held by me, above, that the services of the deceased had been terminated illegally for want of notice and payment of compensation and also that no domestic enquiry was got conducted against him. The service benefits which can be given to the deceased can be seniority and continuity in service w.e.f. March, 1998 till 13.2.2005, on which date, he died. Having regard to the circumstances in which his services were illegally terminated, the deceased is also entitled to full back wages, from the date of his termination till his death.

RELIEF

As a sequel to my foregoing discussion, the claim of the deceased through LR's is allowed and the deceased through LR's is held entitled to seniority, continuity in service alongwith full back wages, from the date of his illegal termination till his death i.e w.e.f. March, 1998 till 13.2.2005. Consequently, the reference stands answered in favour of

the deceased through LR's and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 8th July, 2010 in the presence of parties counsels.

By order,
A. S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla
Camp at Solan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No. 36 of 2008
Instituted on 30.6.2008.
Decided on. 30.7.2010.

Shana devi W/o Shri Pritam Singh C/o New Diamond Tailor, 7-11 Market Lower Bazar, Shimla-1, HP.
..Petitioner.

VS.

1. Secretary (Horticulture) to the government of Himachal Pradesh, Shimla.
2. The Managing Director, Agro Industrial Packaging Ltd., Nigam Vihar, Shimla-171002.
..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri O.P Sharma, Advocate.

For respondent no.1 Shri Jagdish Kanwar, Ld. DDA.

For respondent no.2 Shri Himender Chandel, Advocate

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of services of Smt. Shana Devi W/o Shri Pritam Singh by the Managing Director, Agro Industrial Packaging India Ltd., Nigam Vihar, Shimla-2, HP w.e.f. 29.9.1998 without complying the provisions of the Industrial Disputes Act, 1947 and redeployment of junior persons in other departments, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation, the above aggrieved worker is entitled to from above employer”?

2. In nutshell, the case of the petitioner is that she had been engaged/employed as daily wage clerk w.e.f. 10.6.1996 and worked as such till 29.9.1998 when her services were verbally terminated by the respondents. During the period, she worked with the respondents, her service record was unblemished. Since, her services had been terminated illegally and arbitrarily, the same violated the provisions of section 25F of the Industrial disputes Act, 1947 (hereinafter referred Act). She had neither been paid compensation before terminating her services nor any notice was issued to her. Besides, persons junior to her, employed in other departments have been regularized. Against the aforesaid backdrop a prayer has been made to reinstate her service alongwith all the consequential benefits including full back wages.

3. Respondent no.2 has contested the claim of the petitioner, on the plea that the petitioner had been engaged as daily wage clerk purely on temporary basis vide order dated 31.5.1996 for a period of 89 days and that on 10.6.1996, she joined her duties. Thereafter, she continued with the replying respondent till 28.9.1998 with periodic breaks. Since, there had been reduction in the work load, for this reason, the management took a decision, on 6.11.2008, to retain only fifteen workers out of total twenty nine, who had been engaged on daily wages, after rationalization of the staff. It has been denied that any junior to the petitioner had been retained by the replying respondent. In fact, the services of those fifteen daily wages had been retained, whose names figured at the top, in the seniority list. Since, Smt., Uma Kanwar had been engaged on compassionate grounds, after the death of her husband, she was allowed to continue in service. As far as other persons are concerned, who might have got employment in other departments on the basis of their individual efforts, the replying respondent has nothing to do with such selection process. Further, for the last two years,

the only plant of the respondent stands closed and that no manufacturing process is taking place therein. Other allegations denied.

4. Respondent No.1 has not filed separate reply but it has adopted the reply as filed by respondent No. 2.
5. By filing rejoinder, the petitioner has reiterated her own allegations by denying those of the respondent.
6. Pleadings of the parties gave rise to the following issues which were struck on 14.5.2009.

1. Whether the termination of services of Smt. Shana Devi petitioner by the Managing Director, Agro Industrial packaging, India Ltd., Nigam Vihar, Shimla-2 w.e.f. 29.9.1998 without complying with the provisions of Industrial Disputes Act, 1947 and redeployment of junior persons in other department is illegal and unjustified as alleged? OPP.

2. If issue No. 1 is proved, to what amount of back wages, seniority, past service benefits and compensation, the petitioner is entitled to? OPP.

3. Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 Yes.

Issue No. 2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Relief. Reference answered in favour of the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

9. Admittedly, the petitioner had continued to remain in job with the respondents' w.e.f. 10.6.1996 till 29.9.1998, when her services were terminated without notice and compensation.

10. The defence plea is to this effect that since, there had been reduction in the work load, for this reason, on 6.11.2008, a decision was taken by the management to retain only fifteen workers, whose names figured at the top of the seniority list, out of total twenty nine daily wage clerks, working with the respondents.

11. In the statement of petitioner (PW-1), it has come that in each calendar year preceding her termination, she had completed 300 days. Under the RTI Act, she had sought information and in consequence thereof, she was supplied mandays chart, which is Ex. PA. She further made it clear that her juniors Smt. Uma Kaur and Shri Hem Raj, are still in job/service. In the cross examination, she admitted of having been engaged on daily wages for 89 days but denied that Hem Raj is senior to her.

12. Shri Balvir Singh (RW-1) has appeared in the witness box to support the defence version, on all material, particulars, including that the petitioner, who had been engaged vide office order, copy of which is Ex. R-1, had been given extension, vide office order dated 20.8.1998 which is Ex. R-3 and her joining report is Ex. R-4. The copy of the seniority list which has been issued by the respondent is Ex. R-5, in which the name of the petitioner is at serial number 20. Ex. R-6, is the copy of the proceedings of the management as per which, it had been decided to retain the services of only fifteen workers/employees, as per their seniority. Since, the petitioner was the junior most, as per the seniority, her services were dispensed with. No person junior to her was retained by the department. In the cross examination, he stated that neither any notice nor any compensation had been paid to the petitioner, at the time of her termination. The information, which the petitioner had sought under RTI Act is correct. Smt. Uma Kaur is the junior to the petitioner but she had been engaged on compassionate grounds. He denied that Hem Raj, who is still working is junior to the petitioner.

13. Ex. PA, is the mandays chart, which goes to show that in the preceding twelve calendar months, from the date of her termination i.e 29.9.1998, the petitioner had completed 240 days. It is true that her services had been engaged initially for 89 days but from the evidence, on record, it is quite clear that the same continued to be extended. In these circumstances, when the petitioner had completed 240 days in the twelve calendar months preceding her termination, it was required of the respondents to have complied with the provisions of section 25F of the Act as per

which, a notice was to be served upon the worker/petitioner, besides paying retrenchment compensation. For the failure of the respondents to have complied with the provisions of section 25F of the Act, the termination of the petitioner w.e.f. 29.9.1998, is held to be illegal and unjustified.

14. Another ground on which, the petitioner has challenged her termination is that juniors to her have been retained in service. It has been admitted by Shri Balbir Singh (RW-1), that Smt. Uma Kaur is junior to the petitioner and that she is in service. He has explained that since her services had been engaged on compassionate grounds, for this reason, she is continuing in service. In my considered view, there is violation of section 25G of the Act because the services of the petitioner were terminated by retaining the services of her junior, namely Smt. Uma Kanwar. Thus, the termination of services of the petitioner is also illegal and unjustified for violating the provisions of section 25G of the Act. Consequently, for my above discussion, I hold that the services of the petitioner had been illegally terminated by the respondent without complying with the provisions of the Act. Accordingly, my answer to this issue is in “Yes”.

Issue No. 2 :

15. Although, it has been alleged by the petitioner that she is unemployed but when regard is given to her statement as PW-1, made before this Court, it is highlighted that she has not stated even a single word in this regard. In order to claim back wages, it was incumbent upon the petitioner to have proved this fact that after her termination, she has not been gainfully employed. Since, for want of oral as well as documentary evidence, she has failed to prove this fact and also that she had been in service for about more than two years, I am of the view that she is not entitled to be granted back wages. *It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla* that “full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”.

However, since her services have been terminated, in contravention of the provisions of the Act, I hold that the petitioner is entitled to reinstatement in service with seniority and continuity but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that she(petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of her termination i.e 29.9.1998. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 30th July, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

Ref.41 of 2010

7.7.2010

Sh Ramesh Chand V/s The M.D.M/s winsome Textile Industrial Ltd Baddi, Distt Solan.

7.7.2010:-

Present:- None for the petitioner.

Sh Rahul Mahajan , Advocate with Shri S.K.Sharma General Manager of respondent company is also present.

Although, petitioner has been duly served through registered post but he is not present. I may mention that earlier, on 20.4.2010, notice had been issued to the parties for 4.6.2010 but on that date too, the petitioner was not present, whereas, Sh Rahul Mahajan, Advocate had appeared for the respondent. Since , on that date 4.6.2010, the petitioner was not present, and the reference which has been made to this Court, was required to be decided on merits, another notice was issued to the petitioner for today i.e. 7.7.2010but despite having been served , he has not appeared.

It has been stated by Shri S.K.Sharma, that already a conciliation has been effected between the parties . He further stated that as per the settlement, which has taken place with the petitioner , he has been paid Rs.1,15,000/- (one Lakh Fifteen Thousand only) , in total by way of full & final settlement.

I proceed to record the statement of Shri S.K.Sharma , on oath, which has been recorded.

From the statement of Shri S. K. Sharma , I am satisfied that a lawful compromise/ settlement has already taken place, Between the parties, in terms of Ex.R-1. Accordingly, the claim of the petitioner, as has been made to this Court, by way of reference, made by the appropriate government, stands disposed of as compromised/ fully settled. Consequently, the reference stands answered. Let a copy of this award be sent to the appropriate government for publication in official gazette. File , after completion, be consigned to records.

Announced:
7.7.2010

Sd/-
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA

Ref No. 50 of 2008.
Instituted on 8.9.2008.
Decided on. 21.7.2010.

Shyam Lal S/o Shri Ranu Ram R/o Village Ghunsa, P.O Nerwa, Tehsil Chopal, District Shimla, HP.
..Petitioner.

VS.

1. The Director, Social Justice & Empowerment, HP Shimla-9.
2. The Child Development Project Officer, ICDS, Chopal, District Shimla, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Virender Singh, Advocate.
For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

”Whether the action of the employer i.e (1) Director, Social Justice & Empowerment, HP Shimla-9. 2). Child Development Project Officer, ICDS, Chopal, District Shimla, HP to convert full time/daily wage services of Shri Shyam Lal S/o Shri Ranu Ram to part time service as alleged by the worker is proper and justified? If not, what relief of service benefits including seniority and compensation, the above worker is entitled to from above employer?”

2. Briefly, the case of the petitioner is that, as per appointment letter dated 24.2.1994, he had been engaged as daily wage chowkidar in the office of respondent no.2 and that he joined as such w.e.f. 9.3.1994. However, vide corrigendum dated 22.2.2000 (hereinafter referred corrigendum), it was ordered that in the initial appointment letter dated 24.2.1994, the words appointed **on daily wage basis** may be substituted with the words appointed **on part time basis**. Since, the department had not been paying his wages as per the minimum wages, fixed by the government, he filed an application under section 33-C (2) of the Industrial disputes Act, 1947 (hereinafter referred Act), and that the same was registered as App. No. 24/2000, titled Shyam Lal Vs. Social & Welfare Department. Vide order dated 13.12.2000, passed by this Court, that application stood disposed of by holding that the petitioner had been working as daily wage chowkidar and not a part time chowkidar and for this reason, he was entitled to receive minimum wages as payable to daily wage employees. It is further averred that vide memo no. 1.3/2001-wel.-Estt. dated 18.7.2000 (hereinafter referred memo), issued by respondent no.1, to respondent no.2, it was advised that in future, the petitioner

may be actually made to work as part time worker. In fact, those instructions had been passed just to by pass the order dated 13.12.2000. Further, prior to the issuance of the said corrigendum and memo, no notice under section 9-A of the Act had been issued to the petitioner. On having felt aggrieved by the corrigendum & memo, the petitioner had filed an OA no. 3086/2001, before the Administrative Tribunal and that vide order dated 24.5.2004, the same stood disposed of as having been withdrawn with liberty to file fresh before competent court of law. Thereafter, the petitioner made various representations to the Labour Commissioner, stating therein that the respondents had violated the terms of award dated 13.12.2000 but of no avail. On the contrary, vide letter dated 5.11.2006, issued by the Labour Commissioner, the petitioner was informed that the award passed by the Labour Court stood implemented. In these circumstances, the petitioner was left with no other option but to challenge the omission and commission of the respondents by invoking the provisions of the Act. It is further asserted that even after the issuance of the corrigendum & memo, the petitioner continued to work as full time daily wager, in the office of respondent no.2 and his working hours were from 5.00 PM to 9.00 AM. Despite that he was being paid only the wages of part timer. W.e.f. 10.7.2007, his services stood changed as daily wager and he started getting wages as such. Since, corrigendum & memo had been issued in violation of section 9-A of the Act, he deserves to be treated as daily wage chowkidar for all intents and purposes and further, the difference in wages w.e.f Feb., 2000 till the date of his getting wages as daily wage employee i.e 10.7.2008 (**should have been 10.7.2007**) should be directed to be paid to him along with interest.

3. By raising preliminary objection qua maintainability, the respondents have also contested the claim of the petitioner, on merits, by asserting that in the appointment order dated 24.2.1994, the words appointment on part time basis were inadvertently substituted by „appointed on daily wage" basis. This mistake was duly rectified by issuing the corrigendum. Moreover, there had been no post of daily wage chowkidar in the office of respondent no.2 and this fact was in the knowledge of the petitioner. The wages, as paid to part timers, were being also paid to the petitioner from the date of his initial appointment. Thus, the status of the petitioner from the very beginning was that of part time chowkidar and not as daily wager. It is further pleaded that in compliance with the order dated 13.12.2000, passed by the Labour Court, the petitioner had been paid arrears of daily wage chowkidar to the tune of Rs. 53,000/-, on receipt of sanction from the state government. It has been specifically denied that the instructions had been issued to by pass the order dated 13.12.2000 of the Ld. Court. Since, the status of the petitioner, from the time of his appointment, was that of part time chowkidar, the matter was taken up with the government and directions were issued to respondent no.1 to treat him, in future, as part timer and respondent no.1 in compliance thereof had rightly issued memo to respondent no.2 in order to treat the services of the petitioner as part timer in future. Other allegations either admitted or denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. The pleading of the parties, gave rise to the following issues, which were struck on 9.10.2009.

1. Whether the action of the Director, Social Justice & Empowerment, HP Shimla-9 and Child Development Project Officer, ICDS, Chopal, District Shimla, HP to convert full time/daily wage services of Shri Shyam Lal petitioner to part time services as alleged by the petitioner is improper and unjustified?
OPP.
2. If issue no.1 is proved, to what relief of service benefits including seniority and compensation, the petitioner is entitled to?
OPP.
3. Relief.

6. I have heard the learned counsel for the petitioner and Ld. DDA for the respondents and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 Yes

Issue No. 2 Entitled for seniority and continuity in service as daily wager along with difference in the wages.

Relief. Reference answered in favour of the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

8. Ex. PC is the photocopy of the appointment order dated 24.2.1994 of the petitioner. Its perusal goes to show that the petitioner had been appointed as daily wage chowkidar. The contention of the respondents is to this effect that since, there had been a mistake in the appointment order, the same was got rectified by issuing corrigendum, vide Ex. PB. The stand of the petitioner is to this effect that from the very beginning, he had been appointed as daily wage

chowkidar and performed duties as such. Even, this Court while deciding an application under section 33-C (2) of the Act, vide its order dated 13.12.2000, the photocopy of which is Ex. PA, has categorically held that the petitioner was entitled to the wages as paid to daily paid chowkidars and not as paid to part time workers. The Court further held that any corrigendum issued subsequently i.e. after seven years, would not change the right which had accrued in favour of the petitioner.

9. The petitioner (PW-1) has stated that on 9.3.1994, he had joined as daily wage chowkidar in the office of respondent no.2 and that after seven years, when the department had issued corrigendum to the effect that instead of daily wager, words part time be read, he had filed an application in this Court which was decided on 13.12.2000 and that in consequence thereof, he was paid arrears to the tune of Rs. 53,000/- . Thereafter, he was again paid wages of part timer. In the cross examination, he admitted that as per Ex. R-1, the respondent no.1 had advised that in future he (petitioner) should actually be made to work only as part timer but further explained that he did not get the copy of that letter. He admitted that w.e.f. 10.7.2007, he was made daily wager as per the government policy.

10. Shri Brij Mohan Singh (RW-1), has appeared in the witness box to support the version of respondents, on all material, particulars, including that in the appointment letter, dated 20.7.1994 (Ex. PC), the words appointed on part time basis had been substituted due to clerical mistake for appointment of daily wage basis and that subsequently, the mistake was rectified by issuing corrigendum dated 22.2.2000. In the office of CDPO, Chopal, there was no post of Chowkidar and this was also in the knowledge of the petitioner. As per the initial appointment, the petitioner was being paid/released wages of part timers, whose status was that of a part timer and not of daily wager. As per the orders of the Court, the petitioner had been paid Rs. 53,000/-, on having received approval from the government, vide Ex. R-1 and as per the same, the government had directed respondent no.1 to make the petitioner to work as part timer only. This order was also conveyed to CDPO, Chopal (respondent no.2) vide Ex. R-2 and accordingly, the services of the petitioner were treated as part time worker in future. In the cross examination, he denied that the petitioner used to work from 5.00 PM to 9.AM.

11. Admittedly, as per the appointment order dated 24.2.1994, the petitioner had joined as chowkidar in the office of respondent no.2 on 9.3.1994. The contention of the respondents is that his engagement/appointment was as part time chowkidar and not a daily wage chowkidar and for this reason, a corrigendum dated 26.2.2000 had to be got issued, the copy of which is Ex. PB and as per the same, the initial appointment order dated 24.2.1994, Ex. PC was got rectified.

12. It is quite evident that this corrigendum had been issued after about more than five years from the appointment/engagement of the petitioner. There is nothing, on record, which could go to show that any notice had been issued to the petitioner by the respondents that they intended to rectify the appointment order by substituting words part time chowkidar in place of daily wage chowkidar. In case, the respondents were required to issue such corrigendum, it was obligatory upon them to have issued notice to the petitioner so that he could have stated his version regarding such corrigendum which was proposed to be carried out. Moreover, as already stated above, this Court while deciding application under section 33-C (2) of the Act, as per Ex. PA, has held that the petitioner was entitled to wages as paid to daily wage chowkidar and not as paid to part time workers. The respondents did not challenge the order of this Court dated 13.12.2000, Ex. PA, in higher Courts. Thus, the findings returned by this Court that the petitioner is entitled to wages as paid to daily paid workers have become final. The respondents have relied upon a letter dated 26.6.2001, copy of which is Ex. R-1, in support of their plea that as per the direction/advice of the government, the petitioner was made to work only as part timer and this advice was further conveyed to respondent no.2, vide letter Ex. R-2. In my considered view, when this Court as per its order dated 13.12.2000, the copy of which is Ex. PA, had categorically ruled that the petitioner was entitled to the wages as paid to daily paid chowkidars, neither the government nor the respondents were legally justified to issue such corrigendum or directions, contrary to its findings. It may further be noted that even no notice had been given to the petitioner that the government or respondent no.1 was to advise respondent no.2 that the petitioner should be treated as part timer and for this reason, he should be made to work as such. Consequently, for what has been stated above, the action of the respondents to convert the services of the petitioner, as part timer, which is contrary to the findings of this Court, as per Ex. PA, is held to be totally improper and unjustified. Accordingly, my answer to this issue is in "Yes".

Issue No. 2 :

13. Consequent upon the order, passed by this Court dated 13.12.2000, copy of which is Ex. PA, the government through respondents, had paid Rs. 53,000/- to the petitioner, as is evident from Ex. R-1. Since, the corrigendum and subsequent directions, issued by the government/respondents have been held to be improper and unjustified by me while deciding issue no.1, above, it is held that the petitioner is entitled to be paid as that of *"daily wager"* for the period, during which, he was treated to be part timer and finally became daily wager i.e. 10.7.2007. For this period, the petitioner is entitled to be paid difference in wages, for which he was entitled and which actually, were paid to him, but without interest. The petitioner is also held entitled for seniority and continuity, in service, as daily wager from the date of his initial engagement/appointment i.e. 9.3.1994, when he joined the services of respondent no.2 as chowkidar. Accordingly, my answer to this issue is in "Yes".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that the petitioner be granted wages as that of daily wagers for the period during which he remained part timer, but without interest. Besides, it is ordered that he (petitioner) be also granted seniority of daily wager from the date of his appointment/engagement i.e 9.3.1994, as chowkidar. Consequently, the reference stands answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 21st June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref No. 59 of 2004.
Instituted on 22.3.2004.
Decided on 5.7.2010.

Vinod Kumar S/o Shri Thakur yadav C/o Shri Ramashray Prasad, Village Marranwala, Near PNB, P.O Nanakpura, District Panchkula, Haryana.

..Petitioner.

VS.

The Managing Director, M/s Indofarm Equipments, Plot no. 104-105, Baddi, District Solan, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Rakesh Manta, Advocate.

For respondent: Shri Rahul Mahajan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of services of Shri Vinod Kumar s/o Shri Thakur Yadav, workman by the management of M/s Indo Farm Equipments, Ltd., Plot no. 104-105, Baddi, district Solan, HP w.e.f. 22.11.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to.”

2. In nutshell, the case of the petitioner is that initially, he had been engaged on 13.3.1998 with Welcute Engineering Ltd. as Milling Operator on monthly basis Rs. 1375/- and that in the month of Jan., 2000, the said Welcute Engineering Ltd. was taken over by the Indo Farm Equipment Ltd. i.e respondent company. In fact, the further operation and manufacturing process was being controlled and maintained by the same management as that of Welcute Engineering Ltd. In this way, the services of the petitioner continued with the respondent. However, in the month of Jan., 2000, the respondent management compelled him to sign some blank papers and vouchers by creating fearful situation. Since, on his signing such blank papers and vouchers, his wages and other service benefits were not to be effected in any manner, he did not take any action against the management in the year, 2000. On 9.8.2002, the management again created a fearful situation and again compelled him to sign blank papers and vouchers. Upon this, on 2.9.2000, he raised an Industrial Dispute before the respondent management, through a simple demand notice but no action was taken either by the respondent management or the Labour-cum-Conciliation Officer, Solan, to whom the copy of the same had also been sent. During his service tenure, w.e.f. Jan., 2001 to August, 2002, he had done over time duties of more than four hours, per day, with the respondent company but in this regard, he had not been paid over time wages. In order to claim the same, he had raised an Industrial Dispute against the respondent vide application no.

181 of 2002 dated 8.10.2002, which is pending for adjudication before this Court. Consequent upon his having been raised an Industrial Dispute, as aforesaid, he became eyesore to the respondent. For this reason, the concerned officer of the management started putting pressure upon him to withdraw the aforesaid dispute. When he (Petitioner) ignored to do so, on 22.1.2002 (should have been 21.11.2002), at about 5.30 PM, when he was on duty, some senior officers of the management namely Rajesh Jindal (Production Engineer), Baidyanath Parsad (Foreman) and Sanjay Sharma (Supervisor) came to him and asked to sign blank papers and vouchers by creating fearful situation. When he (petitioner) denied to do so the needful, said Rajesh Jindal, called a security guard and asked him not to allow the petitioner to enter the factory gate, from tomorrow i.e. 22.11.2002. It is alleged that on 22.11.2002, when he went to the factory gate for duty, he was not allowed to enter by Shri Suresh (security guard). When, he tried to see other senior officer of the management, he was not allowed to do so. It is further alleged that, in this way, on having put in more than four consecutive years of service, he was retrenched on 22.11.2002. At that time, his last drawn wages were Rs. 2310/- per month. Further, in each calendar year, he had worked for more than 240 days. Since, his services were terminated during the pendency of the proceedings, before this Court, in application no. 181 of 2002 wherein he had claimed over time wages and also in contravention of the provisions of section 25B of the Industrial disputes Act, 1947 (hereinafter referred Act), he deserves to be reinstated with all the consequential benefits.

3. Petition has been contested, on having raised various preliminary objections, including maintainability and that the claim of the petitioner is false and frivolous. On merits, it has been denied that the respondent has any functional, financial or any other sought of connection with the Welcute Engineering Ltd. with whom the petitioner had worked till 27.1.2000 before voluntarily tendering his resignation on having settled his account with the same (Welcute Engineering Ltd.). It is further asserted that Welcute Engineering Ltd. and Indo Farm Equipment Ltd. (respondent) are two different entities and have no concern with each other. Further, the Welcute Engineering Ltd., which has closed down its business, was not taken over, at any point of time, by the respondent. It has been specifically denied that the petitioner had made to sign blank papers and vouchers. In fact, he (petitioner) had joined the respondent in Feb., 2000 and that on 24.5.2002, he tendered his resignation, which was accepted and he was relieved on 31.5.2002. Again, in the month of August, 2002, he had approached the respondent and given fresh appointment vide letter dated 7.8.2002 for a period of six months on salary of Rs. 1310/- per month. The petitioner had not completed 240 days of continuous service in a calendar year. It is further pleaded that on 21.11.2002, when the petitioner was asked that his targets were not complete and the rejections in the parts machined by him, were on higher side, he got infuriated and threatened the seniors with dire consequences. Since, 21.12.2002, he never turned up to join his duties, in spite of several messages, sent through co-workers. Since, he had been appointed for a fixed period and that his services were on adhoc basis, the same were terminated vide letter dated 5.12.2002, in terms of his appointment letter, which was sent to him through registered post. He had also been informed to collect his dues. As far as, pendency of application no. 181 of 2002, is concerned, the same is not disputed. It is further maintained that the petitioner at ceased to be the employee of the respondent when he tendered his resignation on 24.5.2002 and that the same was accepted on 31.5.2002. Since, the petitioner had abandoned his job voluntarily and never completed 240 days and further that his services were terminated in terms of his appointment letter dated 7.8.2002, there have been no violation of the any provisions of the Act. Further, the petitioner is gainfully employed and earning more than Rs. 5,000/- per month. He has also income from agriculture. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 22.5.2006.

1. Whether the services of the petitioner have been illegally terminated by the respondent w.e.f. 22.11.2002 without complying the provisions of I.D Act, 1947? If so, its effect? OPP.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? OPP.

3. Whether the petition in the present form is not maintainable? OPR.

4. Whether the petitioner has abandoned the job, on his own? OPR.

5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 No
 Issue No. 2 Becomes redundant.
 Issue No. 3 No.
 Issue No. 4 No.
 Relief. Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

8. According to the petitioner, initially, he had been engaged on 13.3.1998 with Welcute Engineering Ltd., which was taken over by the respondent in the month of Jan., 2002 and thus remained in continuous service till 22.11.2002, when his services were illegally terminated/retrenched.

9. On the contrary, the stand taken by the respondent is to this effect that it has no concern, whatsoever, with the Welcute Engineering Ltd. which was a separate entity.

10. At this stage, I may like to point out that, on the record, the petitioner has not brought any such documentary evidence which could go to show that Welcute Engineering Ltd. had been taken over by the respondent and that its management remained the same as that of the Welcute Engineering Ltd. It is true that in the statement of petitioner (PW-1), it has come that initially, he was engaged as a Milling Operator on 13.3.1998 in a factory which functioned till December, 1999 and that thereafter, the factory started functioning under the name of M/s Indofarm Equipment Ltd. but from his such version, it is not proved that Welcute Engineering Ltd. had in fact taken over by the respondent under the same management for want of documentary proof. Even, the petitioner has not examined any other worker in support of his such contention that Welcute Engineering Ltd. had been taken over by the respondent and that the services of the workers who had been engaged therein, had been taken over by the respondent including that of the petitioner. As per the plea, taken up by the respondent, the petitioner had tendered his resignation with Welcute Engineering Ltd. on 27.1.2000 and also settled his account, finally, with the said company. It has further been pleaded that with the respondent, the petitioner had joined in the month of Feb., 2000 and remained till 24.5.2002, when he tendered his resignation, which was accepted and thereafter, w.e.f. 21.5.2002, he stood relieved.

11. According to Shri Akhil Goel (RW-1), the petitioner who had been engaged in Feb., 2000 as Milling Operator, with the respondent company had tendered his resignation on 24.5.2002. Ex. PB is the summary of the attendance record of the petitioner. Although, the petitioner (PW-1) has denied of having resigned from his job with the respondent, on having received full & final payment but he identified his signatures on mark X within encircled A. Similarly, he also identified his signatures on mark Y within encircled B. Since, the petitioner had admitted his signatures on mark X & Y, it lends support to the version of Shri Akhil Goel (RW-1) that on 24.5.2002, he (petitioner) had resigned and relieved from duties w.e.f. 31.5.2002. Even, Shri J.K Aggrawal, (PW-2), who has been examined by the petitioner, has stated from the summoned record, that the petitioner had been engaged in the month of July, 2000 and worked till May, 2002. His (petitioner) attendance and salary wage record is Ex. PB and salary receipt record is Ex. PC. In the cross examination, he admitted that the petitioner had submitted his resignation in May, 2002.

12. From the documentary as well oral evidence, which has been referred to above, it stands duly proved that the services of the petitioner had been engaged with the respondent in the month of July, 2000 as a Machine Operator and he worked till 31st May, 2002, when his services were relieved and his resignation was accepted on 24.5.2002. Thus, the contention of the petitioner that he had continued to remain in service of respondent company w.e.f. March, 1998 till 22.11.2002, becomes falsified. On the contrary, it is quite evident, on record, that initially, the petitioner had been engaged by the Welcute Engineering Ltd. and that for the first time, his services were engaged by the respondent company in the month of July, 2000, as is evident from Ex. PB and continued as such till May, 2002, when he tendered his resignation and stood relieved w.e.f. 31.5.2002.

13. It has been specifically pleaded by the respondent that on having tendered his resignation, on 25.5.2002, which was accepted and in consequence thereupon, he stood relieved on 31.5.2002, the petitioner had again approached the respondent in the month of August, 2002 and that vide letter dated 7.8.2002, he had been given fresh appointment for a period of six months, on monthly salary of Rs. 2310/- Shri Akhil Goel (RW-1) has supported this fact that the petitioner had been reemployed, on his request, vide appointment letter dated 7.8.2002, Ex. RA, for a fixed period of six months. He further stated that the petitioner had stopped coming to attend his duties w.e.f. 21.11.2002. In the cross examination, he denied of having issued letter dated 7.8.2002, in continuation of the previous services of the petitioner. He also denied that the petitioner had completed 240 days in a calendar year preceding his termination. Shri J.K Aggrawal (PW-2), has corroborated this fact that the petitioner had worked till November, 2002. In the cross examination, he further admitted that on the written request of the petitioner for afresh, he had been engaged vide letter dated 7.8.2002, Ex. RA, for six months. As far as statement of the petitioner (PW-1) is concerned, in the cross

examination, he has denied of having received any appointment letter. He also denied that his services had been termination vide mark Z.

14. Although, the petitioner has denied of having received appointment letter, Ex. RA, but on this letter, he admits his signatures encircled B. It has been specifically stated by Shri Akhil Goel (RW-1) that since the petitioner had approached the respondent for reemployment, upon his such request, he had been given appointment letter dated 7.8.2002, which is Ex. RA, for a period of six months. This fact has also been corroborated by Shri A.K Aggrawal (PW-1) that the petitioner had been reemployed.

15. From the oral as well documentary evidence, particularly, Ex. RA, it stands duly proved that vide letter dated 7.8.2002, the petitioner had been given appointed of the post of Machinist as per the terms and conditions, mentioned therein, As per its condition no.6, his appointment was for a period of six months and that after the expiry of that period, his appointment shall automatically terminated. As per its condition no.7, his (Petitioner) services may be terminated by the management at its sole discretion at any time without assigning any reason. There remains no place for doubt that the petitioner had been reemployed on 7.8.2002 as per appointment letter Ex. RA and that he continued in service till 21.11.2002. It is further borne out, from the record, that vide letter dated 5.12.2002, Ex. RB, the services of the petitioner were terminated for the reasons stated therein, particularly, that on 21.11.2002, he (petitioner) had misbehaved with his seniors and refused to obey the directions and also threatened them with dire consequences besides negligent to perform his duties.

16. It is true that the petitioner (PW-1) has stated of having worked for more than 240 days in each calendar year but his such version cannot be believed, particularly, when this fact is considered that he had been reemployed on 7.8.2002 and continued as such till 21.11.2002. I have already observed that the previous service of the petitioner which he had put up with Welcute Engineering Ltd. cannot be taken by the respondent. Since, he has failed to prove that preceding twelve calendar months, from the date of his alleged termination/abandoning the job, he has completed 240 days, it cannot be said that there has been any violation of the provisions of section 25F of the Act. He was required to be given notice and retrenchment compensation, only, if he had worked for more than 240 days in the twelve calendar months preceding his termination.

17. The appointment of the petitioner was in terms and condition of appointment letter Ex. RA dated 7.8.2002. On this letter, he admitted his signature encircled B. It has been specifically stated by Shri Akhil Goel (RW-1) that the petitioner had been reemployed by the respondent for a fixed period of six months vide letter Ex. RA. Since, his appointment was as per the terms and conditions mentioned in appointment letter Ex. RA, his services could have been terminated by the management, on its discretion, at any point of time, without assigning any reason, as per condition no.7. The services of the petitioner were terminated vide Ex. RB. When the appointment of the petitioner had been as per the terms and conditions as contained in appointment letter Ex. RA, there was no legal necessity for the respondent to have order a domestic enquiry against the petitioner, in order to prove the alleged misbehavior with the seniors, by him.

17. In my considered view, the respondent management was within its power to have terminate the services of the petitioner as per the terms and conditions of appointment letter Ex. RA, even before the expiry of six months and without assigning any reason for doing the same. I disagree with the learned counsel for the petitioner that the services of the petitioner have been illegally terminated in utter violation of the provisions of the Act. At this stage, I would like to point out that although the petitioner has also raised some other point including that his services were terminated/disengaged during the pendency of application no. 181/2002 but I may observe that this Court has to answer the reference which has been made by the appropriate government. In this reference, there is nothing such that the termination of the services of the petitioner also bad/illegal for the reason that those were made during the pendency of application no.181/2002. Consequently, for my above discussion, I hold that the petitioner has failed to prove this issue to which my answer is in "No".

Issue No. 2 :

18. In view of my above discussion on issue no.1, this issue becomes redundant.

Issue No. 3 :

19. It is not understandable as to why this petition is not maintainable, particularly, when it has been filed in pursuance to the reference, made to this Court, by the Labour Commissioner. Apart from it, the learned counsel for the respondent could not explain as to why this petition, in the present form, is not maintainable. Accordingly by holding it to be maintainable, my to this issue is in "No".

Issue No. 4 :

20. Although, the respondent has taken the plea that after 21.11.2002, the petitioner had not turned up to so his job but there is no convincing evidence to prove this fact. In case, the petitioner had abandoned the job, it was required to the respondent to have issued him notice to resume his duties. It is true, in the reply, filed by the respondent, it has been asserted that when the petitioner failed to turn up for his job, he had been sent messages through co-workers but no such co-worker has been examined in support thereof. In these circumstances, for want of convincing and reliable evidence, I, without hesitation, hold that the respondent has failed to prove this issue to which my answer is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 5th July, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, SHIMLA**

Ref No. 65 of 2005.
Instituted on 4.7.2005.
Decided on. 31.7.2010.

Ram Lok S/ Shri Bhagat Ram R/o VPO Raidu, Tehsil Nalagarh, District Solan, HP.

..Petitioner.

VS.

The Executive Engineer, HPSEB (Electrical) Sub Division Nalagarh, District Solan, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri H.C Sharma, Advocate.

For respondent: Ms. Sharmila Patiral, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Ram Lok s/o Shri Bhagat Ram ex daily wages beldar by the Executive Engineer, HPSEB, Electrical Sub Division, Nalagarh, District Solan, HP w.e.f. 20.1.1999 without complying the provisions of the Industrial Disputes Act, 1947 is proper & justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. In nutshell the case of the petitioner is that he was engaged as daily rated beldar w.e.f. 27.3.1985 under Electrical Division HPSEB Nalagarh and remained as such till 20.12.1998, when his services were terminated without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act). Further, juniors to him namely Surender Mohan, Shyam Lal, Sunder Pal, Jagdish, Pals Ram and Shyam Lal, have been regularized by the respondent. He had also completed 240 days in each calendar year. Even in the preceding year, when his services were terminated, he had completed 240 days. Since, his services were terminated against the provisions of the Act, he deserves to be reinstated, in service, alongwith all the consequential benefits.

3. The claim of the petitioner has been contested on the plea that initially, the petitioner was engaged as daily wage beldar w.e.f. 23.3.1985 and worked till 25.5.1987 with certain breaks. He was again reengaged w.e.f.

26.12.1987 to 25.10.1988. Thereafter, he remained absent till 1.9.1989 but w.e.f. 2.9.1989 to 29.9.1989, he was again engaged. Thereafter, he remained absent from work till 1.11.1990. W.e.f 2.11.1990 to 20.5.1993, he was again engaged but not worked from 21.12.1992 to 25.4.1993. Again, he was engaged w.e.f. 9.2.1998 and worked as such upto 20.6.1998 and thereafter he had worked w.e.f. 26.12.1998 to 20.1.1999, with interruptions/breaks. Again, he left the job, on his own, and did not turn up. It has been denied that he had completed 240 days in any calendar year, except 1991. Further, since his name had not figured in the seniority list, for this reason, he never acquired the status of temporary workman. Hence he has not right, whatsoever, for regularization. It has further been maintained that he had remained engaged as casual worker, who had abandoned his job, on his own will, whenever, he so desired. Other allegations denied.

4. Rejoinder was not filed. Pleadings of the parties gave rise to the following issues, which were struck on 12.4.2010.

1. Whether the termination of the services of the petitioner is illegal and unjustified? OPP.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? OPP.

3. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No. 1 Yes.

Issue No. 2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Relief Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

7. Although, the petitioner has alleged that he had continued to remain in service w.e.f. 27.3.1985 till 20.12.1998, when his services were terminated but when he appeared in the witness box as PW-1, his such plea got falsified. In fact, he supported the defence plea of having remained engaged in piece-meal. He also admitted that whenever, the work was available, he was being called for by the respondents and got engaged. Moreover, his version that he had kept working till 2000, is also contrary to his case as pleaded in the statement of claim. At this stage, I would like to point out that as per the reference, which has been made to this court, by the appropriate government, the services of the petitioner had been allegedly terminated w.e.f. 20.1.1999. The plea taken by the petitioner in his statement of claim, is contrary to the reference, as made to this court. I may further like to point out that the petitioner (PW-1) has not stated that he had completed 240 days in the twelve calendar months preceding his alleged termination. Apart from his bald statement, he has not brought, on record, any such document which could go to show that he had completed 240 days preceding his termination. On the record, the respondent has brought the mandays of the petitioner which goes to show that he had not worked for 240 days in twelve calendar months preceding his alleged termination. It has been held by the Hon'ble Apex Court in **2009 (120) FLR 1007, titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others** that:

“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”

9. Since, the petitioner has failed to prove that before his alleged termination, he had completed 240 days in the preceding twelve calendar months, his alleged termination cannot be said to be in violation of the provisions of section 25F of the Act as per which, a notice was to be served upon him besides paying retrenchment compensation.

10. The petitioner has further challenged his termination on the plea that his juniors have been retained by the respondent and that they have been regularized. He has specifically named those persons in his claim petition. Before this Court as PW-1, he has also stated, on oath, that his juniors S/Shri Surinder Pal, Jagdish, Pola Ram and Shyam Lal are still in job and their services have been regularized. In the cross examination, he has denied that the aforesaid are not juniors to him.

11. As the respondent has failed to lead any evidence in order to rebut the evidence of the petitioner qua his juniors to have been retained in service and that their services have been regularized, I am of the view that from the statement of petitioner (PW-1), it stands duly proved that the aforesaid Surinder Pal etc. are juniors to the petitioner and that their services have been retained by the respondent. At this stage, I would like to point out that the respondent has not brought, any such record, which could go to show that the aforesaid are not juniors to the petitioner. It has been held by their lordships of *Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC* that :

“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25G & 25H of the Act. Court directed reinstatement with 50% back wages.”

Similarly, our own Hon"ble High Court of HP incase titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903.* has held that:-

Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

13. Since, on record, it stands duly proved that the juniors to the petitioner are still in service, there has been contravention of the provisions of section 25G & 25H of the Act as per which the services of the juniors were required to be terminated firstly and to give preference to the petitioner in case fresh engagements. I disagree with the contention of the Ld. Counsel for the respondent that since, the petitioner has failed to get the relevant record summoned from the department in order to show that the persons, aforesaid, are junior to him, on the basis of his bald statement, the same stands not proved. Consequently, I hold that the termination of the services of the petitioner is illegal and unjustified for being in contravention of the provisions of section 25G & H of the Act. Accordingly, my answer to this issue is in “Yes”.

Issue No. 2 :

14. It has not been alleged by the petitioner that he is unemployed. In order to claim back wages, it was incumbent upon the petitioner to have proved this fact that after his termination, he has not been gainfully employed. For want of oral as well as documentary evidence, he has failed to prove this fact. *It has been held by the Hon'ble Supreme Court in 2010 (I) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla* that “**full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry**”. In view of the law laid down by the Hon"ble Apex Court, I am of the view that the petitioner is not entitled to back wages. However, since his services had been terminated in contravention of the provisions of the Act, I hold that the petitioner is entitled to reinstatement in service with seniority and continuity but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 20.1.1999. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 31st July, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No. 72 of 2005.
Instituted on 29.7.2005.
Decided on. 6.7.2010.

Maya Singh s/o Shri Rattan Singh R/o Village Chotta Khamba, Tehsil Nichar, District Kinnaur, HP.

..Petitioner.

VS.

The Sub Divisional Officer, (Electrical) Sub division, HPSEB, Sarhan Section, Jeori, Tehsil Rampur Bushehr, District Shimla, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Balram Sharma, Advocate.

For respondent: Ms, Sharmila Patial, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

”Whether the termination of services of Shri Maya Singh S/o Shri Rattan Singh workman by the sub divisional Officer (Electrical) Sub Division, HPSEB Sarhan Section, Jeori. Tehsil Rampur, district Shimla, HP w.e.f. 25.5.1999 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. In nutshell, the case of the petitioner, is that he was engaged as beldar, on daily wage basis, in Sub Division (E) Sarhan Section Jeori, Tehsil Rampur, District Shimla, by the respondent Board, on 7.6.1989, and continued as such till 25.3.1998, with artificial breaks. However, his services were dispensed with on 25.3.1998, without notice and paying retrenchment compensation, in contravention of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act). It is further alleged that the respondent has also engaged fresh persons, ignoring his seniority and thereby violated the provisions of section 25H of the Act. On the advise of the his counsel, he had filed an OA no. 1894, against his termination, before the Administrative Tribunal and in consequence thereupon, he was reengaged on 4.12.1998, but again his services were terminated on 25.5.1999. However, the same was disposed of on 18.3.2002, for want of jurisdiction. Since, he had also been advised to file an application in writ petition, bearing no. 1344/2001, titled as Trisha Sharma Vs. State of HP, pending before the Hon"ble High Court, he did the needful by filing an application which was caused to be registered as CMP no 1399/2003. The aforesaid writ was disposed of, by the Hon"ble High Court, as per order dated, 14.11.2003, with liberty to approach the appropriate forum. It is further averred that in every calendar year, he had completed 240 days. There has been no lapse, on his part, to raise an Industrial Dispute, because, only, in the month of May, 2004, he had got information regarding the order, passed by the Hon"ble High Court dated 14.11.2003. Since his services had been terminated in contravention of the provisions of the Act, he deserves to be reinstated with all consequential benefits.

3. The claim of the petitioner has been contested on having raised preliminary objections including limitation and maintainability. On merits, it has been admitted that the petitioner had been engaged on 25.5.1989 and that he worked upto 24.5.1999, with breaks/interruptions. It has been denied that he had been given artificial breaks. In fact, he had been absenting himself, from duties, at his own freewill. Further, he (petitioner) had been engaged as casual beldar against specific work, subject to the availability of the funds. For this reason, his services had been reengaged on 6.11.1998, before passing of the interim order by the State Tribunal. Since, no work is available with the respondent Board, he cannot be reengaged. It has been denied that juniors to him (petitioner) have been retained/engaged in service. Further, for his being casual beldar, against specific work, his services stood automatically terminated, at the end of the work. For this reason, the provisions of section 25F of the Act, were not applicable. Other allegations denied.

4. By filings rejoinder, the petitioner has reiterated his own allegations, by denying those of the respondent.

5. Pleading of the parties gave rise to the following issues which were struck on 14.12.2007.

1. Whether the services of the petitioner have been illegally terminated without complying the provisions of Industrial Disputes Act, 1947 w.e.f. 25.5.1999? If so, its effect? OPP.
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? OPP.
3. Whether the petition in the present form is not maintainable and is barred by limitation? OPR.
4. Relief.

6. I have heard the learned counsels for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No. 1 Yes.

Issue No. 2 Entitled to reinstatement, with seniority and continuity, in service but without back wages.

Issue No. 3 No.

Relief Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

8. Petitioner (PW-1) has led his evidence, by filing affidavit Ex. PA, in which, he has supported all the material facts including that his services were terminated without notice and paying compensation. He further supported to have completed 240 days, in every calendar year and that the services of his juniors namely S/Shri Chattar Singh, Mohan Lal, Govind, Sohan Lal, Madan Lal and other workmen, have been regularized by the respondent. The copy of the order of the State Administrative Tribunal is Ex. PB. In the cross examination, he denied of having abandoned the job, on his own.

9. According to Shri Poyer Sing (PW-2), the petitioner had been engaged on daily wages on 25.5.1989 and he worked till 25.5.1999. S/Shri Chattar Singh, Mohan Lal, Govind, Sohan Lal and Madan Lal are juniors to the petitioner but their services had been engaged on the order of administrative Tribunal. In the cross examination, he has stated that the petitioner had been engaged for specific period and work.

10. The evidence of Shri A.C Brice (RW-1), is to this effect that the services of the petitioner stood disengaged w.e.f. 25.5.1999 as the work for which he had been engaged stood completed. He further clarified that his services had been disengaged after serving notice as per rules. In no calendar year, the petitioner had completed 240 days. The respondent has no work. In the cross examination, he admitted that as per the record, the petitioner had completed 240 days in each calendar year and that juniors to the petitioner namely Chattar Singh, Mohan Lal & others are still working with the respondent. He further made it clear that since the work is available with the respondent, only, for this reason, the juniors have been retained.

11. In his affidavit, Ex. PA, the petitioner has stated that in every calendar year till his illegal disengagement, he had completed 240 days. His such version goes unchallenged/un-impeached. Moreover, Shri A.C Brice (RW-1) supports this fact that the petitioner had completed 240 days in each calendar year. His such admission is on the basis of record, brought by him. Thus, on the record, it duly stands proved that in the twelve calendar months preceding his termination (25.5.1999), the petitioner had completed 240 days. When such was the position, it was obligatory upon the respondent to have complied with the provisions of section 25 F of the Act by giving notice and to also paying retrenchment compensation to the petitioner, before disengaging his services. Thus, for not having complied with the provisions of section 25F of the Act, the termination/disengagement of the services of the petitioner, is illegal and unjustified.

12. The another contention of the petitioner is to this effect that juniors to him have been retained by the respondent and he has named those juniors in his affidavit, Ex. PA. Even Shri A.C Brice (RW-1) has admitted this fact that Shri Chattar Singh, Mohan Lal & others, who are junior to the petitioner, are still working with the respondent and that their service have been retained/engaged, since the work is still available with the respondent. As, on the record, it also stands duly proved that juniors to the petitioner have been still in service, his disengagement/termination is also bad/illegal for being in contravention of the provisions of section 25G & H of the Act. Consequently, for my above discussion, I hold that the services of the petitioner have been terminated in contravention of the provisions of the Act and accordingly, my answer to this issue is in "Yes".

Issue No. 2 :

13. Since, the petitioner has failed to prove that he has not been gainfully employed after his termination, I, without hesitation, hold that he is not entitled for back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service, without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue No. 3 :

14. In his affidavit, the petitioner has explained the reasons, as to why, he raised the Industrial Dispute, so late, from the date (25.5.1999), when his services stood disengaged by the respondent. Upon his raising such Industrial Dispute which could not be reconciled, the appropriate government made a reference to this Court. Since, the petitioner

has filed his statement of claim in pursuance to the reference, which has been made to this Court, I do not find any such reason, which may go to show that his petition/ claim is not maintainable. A challenge has also been posed to the claim of the petitioner, on the plea that it is barred by limitation. However, it is well settled that there is no limitation under the Act, as held by their lordship of *Hon'ble Supreme Court in (1999) 6 SCC 82, Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another.* as under:-

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

15. In view of the above cited ruling, this petition is held not to be barred by limitation and it is also perfectly maintainable in the present form. Accordingly, this issue is answered in negative.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 25.5.1999. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 6th July, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA CAMP AT SOLAN

Ref. No. 80 of 2004.
Instituted on 26.4.2004.
Decided on 9.7.2010.

Sunil Kumar S/o Shri Mohinder Singh R/o Village Chilla, P.O Samati, Tehsil & District Solan, HP.
..Petitioner.

VS.

The Vice President (works) M/s Himachal Exicom Communication Ltd., Chambaghat, District Solan, HP.
..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Rahul Mahajan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Sunil Kumar s/o Shri Mohinder Singh, ex junior operator by the Vice President (works) M/s Himachal Exicom Communication Ltd., Chambaghat, District Solan, HP, w.e.f. 1.4.2003 without complying the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits Shri Sunil Kumar is entitled to."

2. In nutshell, the case of the petitioner is that at first instance, he had been recruited in the employment of respondent company (hereinafter referred respondent) in the month of September, 2000 and continued till 12.3.2001, when his services were illegally terminated. At that time, he had been designated as a „trainee", in order to shirk

liabilities under the Labour Law. When his services were terminated his services, no reasons had been assigned. As a matter of fact, during his service period, he had shown devotion towards his duties. In the month of December, 2002, his services were reinstated by the respondent by designating him as „temporary workman" and that he was also awarded/given back seniority. In this way, he continued to remain in service w.e.f. September, 2000 till 1.4.2003, when his services were finally terminated. By taking the whole period of his service, he is deemed to have completed 240 days with the respondent and for this reason, his services were terminated without complying with the provisions of section 25N of the Industrial Disputes Act, 1947 (hereinafter referred Act) and further without serving any notice and paying compensation. Since, his services have been terminated in contravention of the provisions of the Act, he deserves to be reinstated with all the consequential benefits.

3. The petition has been contested, on having raised preliminary objections, including maintainability and that the petitioner has not come before the Court with true facts. On merits, it has been asserted that the petitioner had joined as a „trainee" on 4.9.2000 for a period of six months, as per appointment letter. His services/assignments came to an end, automatically, after six months from the date of his appointment. Since, in the year, 2002, his name had been forwarded by the Employment Exchange, he was appointed as a temporary workman, for a period of three months, on 12.12.2002. He had accepted the terms and conditions of the appointment letter dated 12.12.2002. He had also given his consent to work as temporary workman, for three months, on 13.12.2002. It has been denied that he had completed 240 days. Other allegations denied.

4. No rejoinder filed. Pleadings of the parties gave rise to the following issues which were struck on 28.11.2005.

1. Whether the services of the petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? OPP.

2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to? OPP.

3. Whether the petition in the present form is not maintainable?

OPR.

4. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No. 1 No

Issue No. 2 Becomes redundant.

Issue No. 3 No.

Relief Reference answered against the petitioner, per operative part of award.

Reasons for findings

Issue No. 1 :

7. The contention of the petitioner is to this effect that although his services had been terminated on 12.3.2001 but since he was reinstated in the month of December, 2002, as a temporary workman, alongwith back seniority, he would be deemed to have remained in the service/employment of the respondent from September, 2000 till 1.4.2003, when his services were finally terminated. In this way, he claims to have completed 240 days, with the respondent.

8. The perusal of Ex. RC, letter dated 4.8.2000, goes to show that initially, the petitioner had been engaged as „trainee", under skill up-gradation/skill matching scheme, pursuant to his interview, held on 28.8.2000, for a period of six months, from the date of joining, as per the terms and conditions, mentioned therein. The petitioner (PW-1), also admits this fact that initially, he had been engaged for six months vide letter Ex. RC. Although, it has been alleged by the petitioner that his services had been illegally terminated on 12.3.2001 but on the face of Ex. RC, his such plea gets falsified because his services, as trainee, were to come to an end, after a period of six months from the date of his joining. Moreover, Shri Sanjay Kumar (RW-1) has also lent support to this fact that as per letter Ex. RC, the petitioner had been engaged as trainee for six months and that his services came to an end after six months.

9. Admittedly, the petitioner had again been appointed/engaged as per appointment letter dated 12.12.2002. It has not been mentioned, in the statement of claim, by the petitioner that his appointment/engagement was for a period of three months. On the record, there is letter dated 12.12.2002, Ex. RA, which goes to show that on the application of the petitioner and subsequent discussion, he had been engaged as temporary workman (Junior Operator) for a period of three months, from the date of joining, as per the terms and conditions, mentioned therein. In the statement of Shri Sanjay Kumar (RW-1), it has come that in the year 2002, since, the respondent required some temporary workmen, it moved the Employment Exchange and in consequence thereof, lists were received which are Ex. RA-3 (2 pages) & Ex. RA-4 (5 pages). The candidates, as per their names, mentioned in the lists, were interviewed and that the candidates who had qualified, were given jobs for three months. The petitioner had been given appointment through letter Ex. RA and that he gave consent to work for three months, vide Ex. RB. After the expiry of three months, his services stood dispensed with automatically. In the cross examination, the petitioner (PW-1) admitted of having appended his signatures on Ex. RA and also that on Ex. RB, bears his signatures.

10. From the documentary evidence, as referred to above, it is abundantly clear that since the name of the petitioner had been sponsored/sent by the Employment Exchange, he was interviewed and was issued appointment letter Ex. RA as per which, his services had been engaged for three months and vide Ex. RA, he had also given consent to work for three months. Since the services of the petitioner stood dispensed with as per the terms and conditions of appointment letter Ex. RA, after the expiry of three months, it cannot be said that his services had been terminated in contravention of the provisions of the Act. It has been held by the **Hon'ble Supreme Court in 2006 (1) SCC 253, KISHORE CHANDRA SAMAL Vs. D.M, ORISSA STATE CASHEW DEVELOPMENT CORPT. LTD.** as under:-

"Engagement of appellant was on NMR basis for a fixed period of time on the basis of payment at different rates - After contractual period of engagement ended there was no renewal thereafter - Held that it is not retrenchment - Order of High court in setting aside the award of the Labour Court, directing reinstatement of the appellant with full back wages, not suffering from any infirmity.

In AIR 2002 SC 2495, M/s Haryana State FCCW Store Ltd. and another Vs. Ram Niwas and another, it has been held by the Hon'ble Supreme Court that :

"Watchman appointed to guard stock of grain stored in open are of Mandi-Employer order sanctioning his engagement stating that engagement was for specific purpose and for particular period- Disengagement/termination of service of watchman after purpose and period of engagement was over- Does not amount to retrenchment."

In (2006) 2 SCC 794, Haryana State Agricultural marketing Board Vs. Subhash Chand & another, it has been held by the Hon'ble Apex Court that:

"Retrenchment - Contractual appointment-Respondent re-employed after termination of service on contract basis after a considerable period - Not a case where the workman was continuously appointed with artificial gap of 1 day only-Section 2(oo)(bb) not applicable - Question of depriving him of any status of privilege would not arise as he was not in service in terms of provisions of the Act - Moreover he worked only for 208 days - Fifth Schedule of Act will have no application - Dispensing with services proper."

11. Thus, having regard to the case law, referred to above, I have no hesitation in holding that the services of the petitioner had not been terminated/retrenched within the meaning of section 2(oo) of the Act. On the contrary, since his services had been engaged for a particular period, the same is covered by section 2(oo) (bb) of the Act and for this reason, neither the provisions of section 25F are applicable nor those as contained under section 25G & H of the Act. I do not find any legal force in the contention of the Ld. AR for the petitioner that since the petitioner will be deemed to have continued in service w.e.f. September, 2000 (4.9.2000) till 1.4.2003, it was required of the respondent to have complied with the provisions of section 25N of the Act, before terminating his services. Even, in appointment letter Ex. RA, there is no such mention that the services of the petitioner had been engaged from the date when he had been initially given appointment/engagement as trainee. Thus, my answer to this issue is in "No".

Issue No. 2 :

12. In view of my above discussion on issue no.1, this issue becomes redundant.

Issue No. 3 :

13. Consequent upon the reference, which has been made to this Court, the petitioner has filed this petition. It is not understandable as to why this petition is not maintainable in the present form. Moreover, at the time of arguments, it could not be explained on behalf of the respondent, as to why, the petition is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 9th July, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla
Camp at Solan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref No. 84 of 2003
Instituted on 10.3.2003.
Decided on. 31.7.2010.

Ramesh Chand S/o Shri Sonam Lal R/o Village & P.O Singla, Tehsil Rampur, District Shimla, HP.

..Petitioner.

VS.

The Executive Engineer, HPSEB, Division Rampur, District Shimla, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Vijay Bhatiya, Advocate.
For respondent Shri Chandan Goel, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

2. In nutshell, the case of the petitioner is that he was engaged as daily wage beldar w.e.f. Feb., 1993 alongwith other beldars, in HPSEB Sub Division Rampur, District Shimla and remained as such till 24.7.1999. Although, the respondent department had been giving him fictional breaks but still he completed 240 days in the calendar year preceding twelve months from the date of his termination. It is further averred that his services had been terminated without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act). Besides, the respondent engaged junior persons by ignoring him. In this way, it violated the provisions of section 25 G & H of the Act. The ground taken by the respondent that the services of the petitioner had to be disengaged for the reason that, no work/budget was available, is false and incorrect. Besides, before terminating his services, the respondent was duty bound to serve him a notice of ten days/ three month's in terms of the standing orders/notifications of HPSEB. Since, his services had been terminated in contravention of the provisions of the Act, he deserves to be reinstated alongwith all the consequential benefits.

3. The petition has been contested on having raised preliminary objections including maintainability and cause of action. On merits, it has been asserted that the petitioner had worked with the respondent w.e.f. 25.5.1994 to 24.4.1998 and not as alleged by him. No intentional breaks had been given to the petitioner whose services were engaged for a specific work and for specific period. Due to the non availability of the work, he (petitioner) had also remained absent and he did not complete 240 days in the preceding twelve calendar months. It is further maintained that the services of the petitioner had not been terminated. On the contrary, the same stood automatically disengaged/ terminated, on the completion of the work. In this way, there was no need to serve notice for ten days/three month's alongwith compensation. It has been specifically denied that some juniors to him have been engaged and that there have been violation of the provisions of the Act. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 30.11.2005.

1. Whether the services of the petitioner have been illegally terminated by the respondent without complying with the provisions of I.D Act, 1947? If so, its effect? OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to? OPP.
3. Whether the petition in the present form is not maintainable? OPR.
4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 Yes.

Issue No. 2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Issue No. 3 No.

Relief Reference answered in favour of the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

8. It has been specifically alleged by the petitioner that he had been engaged w.e.f. Feb., 1993 as daily wage beldar and remained as such till 24.7.1999.

9. On the contrary, the stand of the respondent is that his services had been engaged on 25.5.1994 as daily wage beldar for specific work and he continued as such till 24.4.1998.

10. In the statement of petitioner (PW-1), it has come that he used to be given fictional breaks by the respondent. During the period, he remained engaged as daily wage beldar w.e.f Feb., 1993, at Rampur, the fictional breaks were being given so that he may not complete the required period in a calendar year. Before terminating his services, neither any notice was given to him nor compensation was paid. His juniors S/Shri Gopal, Gurjeet, Veer Singh and Sadh Ram etc. have been engaged after his removal. Although, he had met the XEN, concerned, for his reengagement but he was assured to be reengaged as and when the muster rolls were to be issued. He denied of having been engaged on 25.5.1994 and that continued to work till 24.4.1998 and further that he did not work for 240 days. The mandays chart Ex. RA is not correct.

11. Shri M.L Bansal (RW-1), has stated from the relevant record that the petitioner had been engaged as daily wage beldar for specific work on 25.5.1994 and continued as such till 24.4.1998, with breaks. He (petitioner) did not complete 240 days in any calendar year. Ex. PA is his mandays chart, which is correct, as per the original. Ex. RB to Ex. RB-15, are the muster rolls of the petitioner w.e.f. 25.5.1994 to 24.4.1998. The petitioner had abandoned the job, on his own, without informing the respondent. No junior to him, has been engaged/retained by the respondent at any point of time. In the cross examination, he has stated that some workers, who were working with the petitioner, are still in service but denied that the services of the petitioner were terminated. He admitted that after 1997, the petitioner had not been called for work and that no notice in writing was issued to him to resume the work. He does not know the date of engagements of S/Shri Ram Krishan, Thakur Sain & others daily wagers, who are still working with the respondent, in the same division. He further, explained that they had been engaged on the orders of the Court. He expressed his ignorance that they are juniors to the petitioner or not.

12. From the mandays chart, Ex. RA, coupled with the muster rolls Ex. RB to Ex. RB-15, it is abundantly clear that the petitioner had remained engaged with the respondent w.e.f. 25.5.1994 till 24.4.1998. Shri M.L Bansal (RW-1), has also stated to the similar effect. On the face of the documentary evidence, as referred to above, the contention of the petitioner that his services had been engaged in Feb., 1993 and remained as such till 24.7.1999 becomes false. Further, when regard is given to the statement of the petitioner (PW-1), it is abundantly clear that he has not stated of having completed 240 days in any calendar year including twelve calendar months preceding his termination. The evidence, which has been led by the respondent, clearly goes to show that he (petitioner) had not completed 240 days in any calendar year, including twelve calendar months preceding his termination. The defence plea is that the petitioner had been engaged for specific work and that his services stood automatically disengaged after

the completion of the work. In the statement of Shri M.L Bansal (RW-1), it has come that the petitioner had abandoned his services, on his own, but in the cross examination, he admitted that no notice, in writing, had been issued to him to resume his duties. In this way, there is no convincing and satisfactory evidence, on record, which could go to show that the petitioner had left the job, on his own. In the absence of such, the version of the petitioner, that his services had been terminated, has to be believed, despite the fact that he has failed to prove that he had been engaged in the month of Feb., 1993 and worked till 1999. It has been held by our own Hon'ble High Court in **latest HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another.** that:-

"Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea."

It is quite evident, on record that he had continued to work till 24.4.1998 from the date when he was initially engaged i.e 25.5.1994. As the petitioner has failed to prove that in the twelve calendar months preceding his alleged disengagement, which on record, is proved to be w.e.f. 24.4.1998, I have no hesitation in holding that the respondent was not required to comply with the requirements of section 25F of the Act as per which, a notice was to be issued to the petitioner besides paying retrenchment compensation. I may also like to mention that even in the reference, it has been mentioned that the services of the petitioner had stood terminated/disengaged w.e.f. 25.4.1998. Thus, there is no violation of the provisions of section 25F of the Act.

13. Another ground on which, the petitioner has challenged his termination is that juniors to him have been retained/engaged by the respondent after his termination. He has named them to be S/Shri Gopal, Gurjeet, Veer Singh and Sadh Ram. It has been admitted by Shri M.L Bansal (RW-1) that some workers, who had worked with the petitioner, are still in service. As far as S/Shri Ram Krishan, Thakur Sain and others are concerned, he could not give the date of their engagements but made it clear that they are still working with the respondent. He further tried to explain that their services had been engaged on the orders of the Court but expressed his ignorance that whether they are junior to the petitioner or not.

14. It has been specifically alleged by the petitioner, in his claim, that the respondent engaged fresh persons after his termination by ignoring him. Before this Court, while appearing in the witness box as PW-1, he has named them, as already referred to above. Even, from the statement of Shri M.L Bansal (RW-1), it stands proved that the persons, who have been named by the petitioner, to be his juniors, are still working with the respondent department. From his statement it is not borne out that he has denied them to be not junior to the petitioner. In these circumstances, the petitioner has succeeded in discharging the onus which was upon him to prove that persons juniors to him have either been engaged or retained by the respondent. When, he (petitioner) succeeds in discharging his onus, it was upon the respondent to have led evidence to the contrary either oral or documentary. Since, the respondent has failed to lead such evidence to disprove the version of the petitioner that his juniors have been retained by the respondent, I am of the firm view that there has been non compliance of the provisions of sections 25G & H of the Act, as per which, the services of the juniors were required to be disengaged than that of petitioner or in case some new persons were to be engaged, the petitioner was required to be given preference. It has been held by our own Hon'ble High Court incase titled as **State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903.** that :-

"Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act."

15. For my above discussion and law laid down by the Hon'ble High Court (supra), I have no hesitation in holding that the services of the petitioner had been terminated/disengaged w.e.f. 25.4.1998, illegally and in an unjustified manner and that too without complying with the provisions of the Act i.e section 25G & H. Accordingly, my answer to this issue is in "Yes".

Issue No. 2 :

16. It has not been alleged by the petitioner that he is unemployed. In order to claim back wages, it was incumbent upon the petitioner to have proved this fact that after his termination, he has not been gainfully employed. For want of oral as well as documentary evidence, he has failed to prove this fact. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla*** that "***full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry***". In view of the law laid down by the Hon'ble Apex Court, I am of the view that the petitioner is not entitled to back wages. However, since his services had been terminated in contravention of the provisions of the Act, I hold that the petitioner is entitled to reinstatement in service with seniority and continuity but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue No. 3 :

17. It is not understandable as to why this petition is not maintainable, particularly, when it has been filed in pursuance to the reference, made to this Court, by the Labour Commissioner. Apart from it, the learned counsel for respondent could not explain as to why this petition is not maintainable. Accordingly, by holding it to be maintainable, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 25.4.1998. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 31st July, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla .

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No. 84 of 2006
Instituted on 9.6.2006.
Decided on. 23.7.2010.

Bir Singh s/o Shri Sohan Singh R/o Village Trimali, P.O Dadahu, District Sirmour, HP.

..Petitioner.

VS.

The Executive Engineer, Giri Power Hydel Project, HPSEB, Giri Nagar, District Sirmour, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri V.B Verma, Advocate.

For respondent: Ms. Sharmila Patial, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Bir Singh S/o Shri Sohan Singh workman by the Executive Engineer, Giri Power Hydel Project, HPSEB, Giri Nagar, District Sirmour, HP w.e.f. 20.9.1996 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. Briefly, the case of the petitioner is that, initially, in the year, 1970, he had been engaged by the respondent and continuously worked till 1985, by completing 240 days in every calendar year. Thereafter, they (respondents) started giving breaks in his service and finally, the same were terminated in the year, 1997, by a verbal order, in violation of the provisions of Industrial Disputes Act, 1947 (hereinafter referred Act) and the standing orders. It is further averred that the respondent did not reengage his service despite assurances. They had also retained S/Shri Rattan Singh, Balinder Singh and Satish, who are junior to him. Since, his services have been disengaged/terminated without notice and compensation and further in violation of the provisions of the Act, he deserves to be reinstated with all the consequential benefits.

3. The petition has been contested on having raised various preliminary objections including maintainability and bad for non joinder and misjoinder of necessary parties. On merits, it has been denied that the services of the petitioner had been disengaged illegally. In fact, he had left the job w.e.f. 30.9.1995, on his own. It has been denied that he had completed 240 days in every calendar year except, 1983. There is further specific denial that S/Shri Rattan Singh, Balinder Singh and Satish, have been retained in service and that they are junior to the petitioner. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 27.11.2007.

1. Whether the services of the petitioner have been terminated w.e.f. 20.9.1996 without complying with the provisions of ID Act, 1947? If so, its effect? OPP.

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? OPP.

3. Whether the present claim is time bared and is not maintainable in the present form? OPR.

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 No.

Issue No. 2 Becomes redundant.

Issue No. 3 No.

Relief Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

8. At the very outset, I would like to point out that as per the reference, which has been made to this Court, the services of the petitioner are alleged to have been terminated w.e.f. 20.9.1996, in contravention of the provisions of the Act. However, when regard is given to the statement of claim, which has been filed by the petitioner, it is revealed that his services had been allegedly terminated by the respondent in the year, 1997 by way of verbal order.

9. On the contrary, the stand of the respondents is to this effect that the petitioner had left the job on 30.9.1995, on his own, and that his services were never terminated.

10. In the statement of petitioner (PW-1), it has come that in the year, 1970, he had been engaged as beldar, on daily wages, and continued as such till 1985, when his services were terminated without notice and payment of compensation. Upon this, he had filed a case before the Hon'ble High Court where he was granted stay and his services were reengaged for eleven months but again, the same were terminated without notice and payment of compensation. He had completed 240 days in every calendar year preceding his termination. S/Shri Rattan Singh, Balinder Singh and Satish, who are his juniors, had been engaged by the respondents and that they have also been made regular. In the cross examination, he denied of not having completed 240 working days in twelve calendar months preceding his termination. In order to show that S/Shri Rattan Singh, Balinder Singh and Satish are his juniors, he has no record.

11. According to Shri Prakash Chand (RW-1), the petitioner had been engaged on 1.8.1976 as daily wage casual worker and worked till 30.9.1995 with fictional breaks. Only, in the year, 1983, he had completed 240 days. On his own, the petitioner had left the job and never came back to join his duties. He does not know that as to whether S/Shri Rattan Singh, Balinder Singh and Satish, are junior to the petitioner. In the cross examination, he admitted that the department had neither issued any notice nor paid compensation to the petitioner. Regarding S/Shri Rattan Singh, Balinder Singh and Satish, he has not brought the record, but made it clear that Rattan Singh is still working in their department. He denied that in every calendar year, since, 1976 till 1995, the petitioner had completed 240 days.

12. When, regard is given to the statement of petitioner (PW-1), it is abundantly clear that he has not deposed in consonance with his allegations, as made in the statement of claim, filed by him. It is to be noted that, it is not the case of the petitioner that when, in the year, 1985, his services were terminated, he filed a case in the Hon'ble High Court and was granted stay and consequent thereof, he was reengaged for eleven months. His statement is very specific

that in the year, 1985, his services had been terminated, by way of verbal order in violation of the provisions of the Act. I may point out that this plea/evidence of the petitioner that his services had been terminated in the year, 1985, is contrary to the reference, which has been made to this Court, as per which, the services of the petitioner are alleged to have been terminated w.e.f. 20.9.1996, without complying with the provisions of the Act. Undoubtedly, it has been stated by the petitioner (PW-1) that, he had completed 240 days in every calendar year preceding his termination but in support of his such version, he has not brought any documentary proof/evidence. It has been held in **2009 (120) FLR 1007 an Civil Appeal no. 4468 of 2005 of Hon'ble Supreme Court incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others** that:

"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."

13. Similarly, it has been held by the Hon'ble Apex Court in **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh** that:-

"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

14. The respondent has brought, on record, the detail of working days of the petitioner. Its perusal goes to show that the petitioner had been engaged in the month of August, 1976 and remained in job till 30.9.1995. Shri Prakash chand (RW-1) has supported this fact that the petitioner had been appointed on 1.8.1976, as daily wage casual worker and worked till 30.9.1995. His such version gets corroboration from the detail of working days of the petitioner, which has been brought, on record. He further made it clear that the petitioner had left the job, on his own, and never came back to join his duties. Since, this court is required to answer the reference which has been made to it, by the appropriate government, the alleged termination of the petitioner is required to be taken as 20.9.1996 as find mention in the reference. From this date, the petitioner was required to prove that in the preceding twelve calendar months, he had completed 240 days. However, when regard is given to his statement, made before this Cour, as PW-1, he has not stated that his services had been terminated w.e.f. 20.9.1996. As already pointed out that, he (petitioner) has given an entirely different version, that his services had been terminated in the year, 1985, and that on the intervention of the Hon'ble High Court, the same were reengaged for eleven months. For the application of section 25F of the Act, it was required of the petitioner to have proved that in the twelve calendar months preceding his termination, he had completed 240 days. In other words, it can be said that the respondent was required to issue him notice and pay compensation, only if the petitioner had proved the aforesaid.

15. The plea of the respondent is that w.e.f. 30.9.1995, the petitioner had left the job, on his own and did not come back to do his job. This plea has been duly supported by Shri Prakash Chand (RW-1). At this stage, I would like to mention that when the petitioner had raised a demand notice, he must have asserted that his services had been terminated by the respondent w.e.f. 25.9.1996, without complying with the provisions of the Act. Only for this reason, the reference which has been made to this Court, is in respect of his alleged termination w.e.f. 22.9.1996 without complying with the provisions of the Act. This clearly goes to show that in the demand notice, he had concealed this fact that w.e.f. 30.9.1995, he had not turned up to do the job, on his own. In my considered view, for concealing this fact, he had come up with a plea that his services had been terminated on 20.9.1996. Moreover, he has not brought, any such record, before this Court, which could go to show that till 20.9.1996, he had been working with the respondents. On the contrary, from the statement of Shri Prakash Chand (RW_1), which also gets support from the mandays chart of the petitioner, it stands duly proved that the petitioner had worked till 30.9.1995 and thereafter left the job, on his own. On the face of convincing and reliable evidence, as referred to above, I have no hesitation in concluding that the petitioner had abandoned the job, on his own, w.e.f. 30.9.1995 and further that his contention that his services were terminated w.e.f. 20.9.1996 is totally incorrect/false.

16. The petitioner has also challenged his alleged termination on the plea that his juniors namely S/Shri Rattan Singh, Balinder Singh and Satish, are still working with the respondents. It may be mentioned that in order to prove that the aforesaid are juniors to him, the petitioner was required to lead convincing and specific evidence. In his statement (PW-1), it has come that he had no record to show that the aforesaid are junior to him. Since, the onus was upon him to have proved this fact that the aforesaid are juniors to him, it was required of him to have taken the necessary steps in order to get the relevant record, produced before this Court. In the statement of Shri Prakesh Chand (RW-1), it has come that he does not know as to whether the aforesaid are junior to the petitioner and further that Shri Rattan Singh is still working in their department. From his such version, it is not proved that he admits Rattan Singh, who is still working in the department, to be junior to him. Thus, the petitioner also fails to prove that the respondents

have retained/engaged junior persons to the petitioner in violation of the provisions of section 25G & H of the Act. Consequently, for my above discussion, I hold that the petitioner has failed to prove this issue, to which my answer is in "No".

Issue No. 2 :

17. In view of my findings on issue no.1 above, this issue becomes redundant.

Issue No. 3 :

18. In support of this issue, no evidence was led by the respondent being the legal issue. It is well settled that there is no limitation under the I.D Act, 1947 as held by their lordship of ***Hon'ble Supreme Court in a case, as reported in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. as under:-***

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

In view of the above cited ruling, this petition is held not to be barred by limitation. Moreover, there is nothing on record which could show as to why this petition is not maintainable. Since, pursuance to the reference, made to this Court, the petitioner had filed the statement of claim, the same is held to be maintainable because this court is required to answer the reference. Thus, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered in against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 23rd July, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Ref. 86 of 2009
14.7.2010

Sh Subhash Singh V/s The Factory Manager, M/s Systole Remedies Ltd Ogli, Kala Amb, Distt Sirmour.

14.7.2010:-

Present:- None for the parties.
Be awaited upon.

Presiding Judge.
Labour Court, Shimla.

Case called again. It is already 3.00 PM.

14.7.2010:-

Present:- None.

At this stage. I would like to point out that the petitioner had been duly served and that on 31.12.2009, he had appeared before this Court, on 4.3.2010, when the case was fixed for the service of respondent, the petitioner had appeared alongwith Sh Eklavya, Advocate . Since , on that date , the respondent could not be served , again , the case

was fixed for 23.4.2010, for the service of the respondent. On the fixed date i.e. 23.4.2010 Shro Eklavya, Advocate appeared for the petitioner but statement of claim was not filed. The case was again fixed for the service of the respondent for 2.6.2010 Since, on 2.6.2010, neither the petitioner was present nor his counsel and also the respondent despite having been served, it was again ordered that both the parties be issued fresh notices through ordinary as well as registered post for 14.7.2010. Even, today (14.7.2010), neither the petitioner is present nor his counsel. The respondent is also not present despite having been served. In these circumstances, when this court has made every possible effort to procure the presence of the parties so that the reference which has been made to this Court can be decided, on merits, but the parties have failed to appear, I have been left with no other alternative but to answer the reference, which has been made by the appropriate government, on the basis of material, available, on the file.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:-

“Whether termination of services of Shri Subhash Singh s/o Shri Om Prakash by Factory Manager, M/s Systole Remedies (Pvt) Ltd, Village ogli, Trilokpur Road Kala Amb, Distt Sirmour HP w.e.f. 23.4.2008 without complying the provisions of the Industrial Disputes Act,1947 is proper and justified ? If not, what relief of service benefits and amount of compensation the aggrieved workman is entitled to ?”.

From the reference, it appears that the petitioner (Subhash Singh) has challenged the termination of his services by the respondent (Factory Manager, M/s Systole Remedies (Pvt.) Ltd, Village ogli, Trilokpur Road Kala Amb Distt Sirmour HP), w.e.f. 23.4.2008, on the ground that the provisions of Industrial Disputes Act 1947 (hereinafter referred Act) have not been complied with.

Despite having been served and put his presence before this Court, personally, as well as through Counsel Shri Eklavya, the petitioner did not file statement of claim. In this way, there is no material, on file, on behalf of the petitioner to state as to why his termination w.e.f 23.4.2008 is illegal and unjustified for want of compliance of the mandatory provisions of the Act. For his failure to bring, on record, any such material which could support/ substantiate his plea that his services were terminated without complying with the provisions of the Act. I have been left with no other alternative but to hold that he has failed to prove/establish that w.e.f. 23.4.2008, his services were terminated in contravention of the provisions of the Act. Consequently, the reference stands answered against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:-
14.7.2010

Sd/-
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA CAMP AT NAHAN

Ref no. 108 of 2007.
Instituted on 24.9.2007.
Decided on. 27.7.2010.

1. Gain Chand s/o Shri Singh Ram R/o Village Churam, P.O Pallion, Tehsil Nahan, District Sirmour, HP.

2. Devinder Singh s/o Shri Amar Singh R/o Village Mirpur Kotha, P.O. Trilokpur, Tehsil Nahan, District Sirmour, HP.

3. Ramesh Kumar S/o Shri Ram Swaroop R/o Village Bhagpur, Shimblawala, P.O Pallion, Tehsil Nahan, District Sirmour, HP.

. Petitioners.

VS.

The Collector of Forest Settlement Nahan, District Sirmour, HP.

. Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Prashant Thakur, Advocate.
 For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether the termination of services of S/Shri Gain Chand S/o Shri Singh Ram, Devinder Singh S/o Shri Amar Singh and Ramesh Kumar S/o Shri Ram Swaroop workmen by the Collector, Forest Settlement Nahan District Sirmour, HP w.e.f. June, 2004, without complying with the provisions of the Industrial disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen are entitled to?”

2. In nutshell, the case of the petitioners is that w.e.f. October, 2003, they had been engaged as daily wagers by the respondent and continued as such till June, 2004 when their services were terminated, verbally, without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred Act). They had completed 240 days in every calendar year and worked to the best of their capabilities. It is further asserted that juniors to them have been retained in service. Since, their services had been disengaged in violation of the provisions of the Act, they deserve to be reinstated in service with all the consequential benefits.

3. The claim of the petitioner has been contested on having raised various preliminary objections including that the forestry works are generally seasonal in nature and that the daily wage mazdoors are engaged for field operations works, which are available maximum for 200 days, in a calendar year. On merits, it has been asserted that except 2002 & 2004, the petitioners have not completed 240 days in any calendar year. Further, as per the mandays chart, they had been given work even in the years, 2005, 2006, 2007 & 2008. The mazdoors are engaged with the revenue field staff, for survey and demarcation. During rainy season, their services are disengaged. Presently, no field operations are being carried out by the respondent and for this reason, the petitioners cannot be reengaged. It is further maintained that the disengagement and engagement of daily wage mazdoors, including the petitioners, are being done on the principles of first come last go and vice-versa. Thus, there has been no violation of the provisions of the Act.

4. By filing rejoinder, the petitioners have reaffirmed their own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 29.5.2009.

1. Whether the termination of services of S/Shri Gain Chand, Devinder Kumar and Ramesh Kumar by the Collector Forests Settlement Nahan w.e.f. June, 2004 without complying with the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged? ..OPP.
2. If issue no.1 is proved, to what relief of service benefits, the petitioners are entitled to? ..OPP.
3. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1 Yes.
 Issue No.2 Entitled to reinstatement in service with seniority and continuity but without back wages.
 Relief. Reference answered in favour of the petitioner and against the respondent, per operative part of award.

Reasons for findings

Issue No.1

8. It is true that as per the defence version, the services of the petitioner were being engaged in order to do seasonal work, but, on the record, no such document has been produced which could go to prove that the petitioners had been made know that their services were only for temporary/casual work and that the same were required to be disengaged after the completion of the work. All the three petitioners Gain Chand (PW-1), Devinder Kumar (PW-2) & Ramesh Kumar (PW-3) have supported this fact that in the month of June, 2004 their services had been disengaged and

that now they have been engaged as daily wagers. They further stated that before terminating their services, neither any notice was issued nor compensation paid. In the cross examination, they admitted that their services had been engaged in connection with forest settlement works but denied that such work was available for only 200 days in normal circumstances. They further admitted that as per seniority, they are being reengaged.

9. According to Shri Kamal Kishore (RW-1), the petitioners are still working in their department. As per the need of the work, their services are engaged and disengaged. He further made it clear that the work for which the services of the petitioners are being engaged, is temporary in nature. In the cross examination, he admitted that petitioner Gain Chand had completed 240 days, in the year, 2004 and Devinder Kumar in the year, 2002. Petitioner, Ramesh Kumar completed 240 days in the years, 2002 & 2004. He admitted that S/Shri Chattar Singh, Ramesh Kumar, Joginder Singh and Narinder Kumar, who had been engaged as daily wage chainman/mazdoor, have been regularized.

10. From the reply, which has been filed by the respondent, it is abundantly clear that petitioner, Gain Chand, had completed 240 days in the year, 2004. As far as petitioner Devinder Singh is concerned, he had completed 240 days in the year, 2002. Petitioner Shri Ramesh Kuamar had completed 240 days in the years, 2002 & 2004. From the reply, which has been filed by the respondent, it appears that the petitioners had also completed 240 days in twelve calendar months preceding their termination i.e. w.e.f. June, 2004. I may mention that in his examination in chief, Shri Kamal Kishore (RW-1) has not stated that the petitioners had not completed 240 days in the preceding twelve calendar months from the date of their termination. In this way, having regard to the oral as well as documentary evidence, on record, I have no hesitation in holding that each of the petitioners had completed 240 days in the twelve calendar months preceding their termination/disengagement.

11. In the statement of Shri Kamal Kishore (RW-1), it has not come that when the services of the petitioners were initially engaged as daily wage mazdoor/worker, they had been told that their services were liable to be terminated/disengaged, after the completion of the work. In the absence of such and also that each of the petitioners has shown to have completed 240 days in the twelve calendar months preceding their disengagement, I, without hesitation, hold that it was obligatory upon the respondent to have complied with the provisions of section 25F of the Act, before disengaging their services. I may also like to observe that there is nothing such, on record, which could go to show that the termination/disengagement of the petitioners is covered under section 2(oo) (bb) of the Act. Consequently, for my above discussion, I hold that the termination/disengagement of the services of the petitioners w.e.f. June, 2004 is improper and unjustified for being in violation of the provisions of the Act. Accordingly, my answer to this issue is in "Yes".

Issue No. 2

12. When regard is given to the statement of the petitioners, when they appeared in the witness box as PW-1, PW-2 & PW-3, it is quite clear that after having been disengaged in the month of June, 2004, their services are being reengaged and they have been still working with the respondent. I may also like to mention that as per the reply, filed by the respondent, petitioner, Gain Chand had worked for 180 days in the year, 2005, 129 days in the year, 2006, 134 days in the year, 2007 and 106 days in the year, 2008(6/2008). Similarly, petitioner, Devinder Singh had worked for 191 days in the year, 2005, 157 days in the year, 2006, 126 days in 2007 and 169 days in 2008 (6/2008). As far as petitioner Ramesh Kumar is concerned, he had worked for 186 days in the year, 2005, 152 days in 2006, 114 days in 2007 and 169 days in 2008 (6/2008). When regard is given to this fact that the petitioners are still working with the respondent, I am of the view that they require to be reengaged in service with continuity and seniority in service w.e.f. June, 2004. Thus, my answer to this issue is in "Yes" accordingly.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioners is allowed and it is ordered that they (petitioners) be reinstated in service, with seniority and continuity but without back wages, from the date of their termination i.e w.e.f. June, 2004. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 27.7.2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla
Camp at Nahan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 110 of 2007.
 Instituted on 24.9.2007.
 Decided on. 20.7.2010.

Naveen Kumar S/o Shri Shanti Lal R/o Village Chanawat, P.O Baldiyan, Tehsil & District Shimla, HP.
 . Petitioner.

VS.

The Asstt. Floriculturist, Deptt. of Horticulture, Nav Bahar, Shimla-2.
 . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Vishal Bindra, Advocate.
 For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Naveen Kumar s/o Shri Shanti Lal workman by the Asstt. Floriculturist Deptt. of Horticulture, Nav Bahar, Shimla-2 w.e.f. 25.5.2006 without complying the provisions of the Industrial Disputes Act, 1947 is proper & justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. Briefly stated facts of the case are that, consequent upon an interview, which was held on 21.1.1999, the petitioner was selected as driver, by the respondent department and accordingly, he was given appointment, on 5.3.1999, as daily wage, on 89 days basis, as per the terms and conditions, enumerated in the order itself. On, 6.3.1999, he joined as driver in the Floriculturist Wing of the Horticulture Department and was asked to drive Tata Automobile bearing registration no. HP 07-4489 (hereinafter referred vehicle). Although, he had been given appointment for a period of 89 days but he continued even after the stipulated period. The department had neither issued any fresh order, in writing, nor executed any fresh agreement, with him. In fact, he had been asked to continue as the budgetary provisions for the post of driver existed even after the expiry of 89 days. He had also been assured by the department that his services would be regularized. In this way, he continued to remain with the department, as driver, till 26.8.2000, when his services were terminated orally. Prior to his termination, he had completed 240 days in the preceding twelve calendar months. The said order of termination dated 26.8.2000, had been assailed by him, in the State Tribunal, by filing an Original Application (OA no. 3105/2000). Vide order dated 10.11.2005, the Tribunal was pleased to direct the department to reengage him at the same place or in the vicinity, where the work was available. In compliance with the order dated 10.11.2005, his services were reengaged. However, vide order dated 17.3.2006, the Tribunal was pleased to dismiss the OA, for want of jurisdiction, by clarifying that the petitioner was not to be debarred from claiming any remedy before a competent forum. After passing of the said order dated 17.3.2006, the department, immediately, removed him from service, vide order dated 25.5.2006. It is averred that he had worked continuously with the department, uninterrupted till 25.5.2006. Moreover, the persons, junior to him, have also been retained by the department. In this way, his services had been terminated in contravention of statutory provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act). Against the aforesaid backdrop, a prayer has been made for reinstating him, in service, alongwith all the consequential benefits.

3. The claim of the petitioner has been contested on having raised various preliminary objections including maintainability. On merits, it has been admitted that the petitioner was engaged vide order dated 5.3.1999, but only for 89 days, as per the terms and conditions of the said order which made it clear that after the expiry of the 89 days, he (petitioner) could not have made claim for appointment or regularization and that his services could have been removed without any notice. For want of funds, his services were disengaged on 25.8.2000 in terms of the appointment order. It has been admitted that vide order dated 10.11.2000, the Administrative Tribunal had directed the department to reengage him and that in pursuance thereof, he was reengaged on 13.11.2000 and continued as such till the final order dated 17.3.2006, whereby the OA was dismissed. Thereafter, the respondent department dispensed with his services on 25.5.2006, for want of work and funds, in terms of the initial appointment order dated 5.3.1999. It has been specifically denied that he had completed 240 days in preceding twelve calendar months prior to his termination and that his services were terminated in contravention of the provisions of the Act. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues, which were struck on 7.8.2008.

1. Whether the termination of services of Shri Naveen Kumar petitioner by the Assistant Floriculturist Department of Horticulture, Nav Bahar Shimla-2 w.e.f. 25.5.2006 without complying with the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged? ..OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to and since when? ..OPP.
3. Whether the present reference is not maintainable as alleged? ..OPR.
4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1 Yes.

Issue No.2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Issue No.3 No.

Relief. Reference answered in favour of the petitioner and against the respondent, per operative part of award.

Reasons for findings

Issue No.1

8. It is not a disputed fact that the petitioner had been initially engaged as daily wage driver, as per order dated 5.3.1999, for a period of 89 days, in terms and conditions enumerated therein. It is also an admitted fact that he had continued to remain as such till 26.8.2000, when his services were terminated. It is further evident, on record, that pursuance to the order dated 10.11.2000, passed by the Administrative Tribunal, the services of the petitioner were reengaged and he continued to remain in job till 25.5.2006, when his service were dispensed with/disengaged.

9. From the admitted facts, aforesaid, it is abundantly clear that the petitioner had continued to remain in job/service till 25.5.2006, despite the fact that as per order dated 5.9.1999, his appointment/engagement was only for 89 days, as per the terms and conditions enumerated therein. The plea of the petitioner is specific to this effect that, he had completed more than 240 days in every calendar year including the year preceding his termination. Before this Court, he (PW-1) has specifically stated that, on 25.8.2006 (**should have been 25.5.2006**), when his services were terminated by the respondent, neither any notice was served upon him nor he was paid any compensation. Preceding his termination, he had completed 240 days. In the cross examination, he admitted that vide order Ex. RA, he had been initially engaged as driver for 89 days and that as per said order, his services were to be dispensed with without notice and without assigning any reason. He had given joining report on 6.3.1999, vide Ex. RB, and that as per the terms and conditions of the appointment order, his services were dispensed with, on 25.8.2000. He further admitted that as per order Ex. RC, passed by the Administrative Tribunal, his services were reengaged but the same stood again dispensed with, in terms of subsequent order passed by the Administrative Tribunal. There is further admission that no notice or compensation was required to be given to him and that in the calendar year, 2006, he had worked for 13 days preceding his removal.

10. Shri Prakash Chand (PW-2) has stated from the record that the mandays chart, of the petitioner, Ex. PA, is correct as per the original. Now, they have no necessity for the post of driver.

11. Shri B.S Guleria (RW-1), has appeared in the witness box to support the defence version, on all material particulars, including that when the OA of the petitioner was finally dismissed, for want of jurisdiction, his services were disengaged on 25.5.2006, for want of work and funds. Preceding his termination, the petitioner had not completed 240 days. In the cross examination, he admitted that the petitioner had worked continuously from 5.3.1999 to 28.8.2000 and that neither any notice nor compensation had been paid to him. He further admitted that he (petitioner) had continuously worked w.e.f. 13.11.2000 to 25.5.2006, on the orders of the Administrative Tribunal and that preceding his termination, on 25.5.2006, he had completed 240 days in the twelve calendar months. He further admitted that on 27.7.2009, the drivers were recruited by the respondent, who joined on 28.8.2009. Ex. PA is the copy of mandays chart of the petitioner, which goes to show that in the preceding twelve calendar months, from the date of his termination, the petitioner had completed 240 days. This fact has further been admitted by Shri B.S Guleria (RW-1).

The evidence, on record, further makes it clear that before terminating the services of the petitioner, no notice had been issued to him. Similarly, he had not been paid any retrenchment compensation. Since, the petitioner has proved, on record, that before his termination, he had completed 240 days in the twelve calendar months, it was required of the respondent to have issued him notice and also to pay retrenchment compensation, before terminating his services, on 25.5.2006. Definitely, there is contravention of the provisions of section 25F of the Act.

12. The statement of Shri B.S Guleria (RW-1) goes to show that on 27.7.2009, the department had recruited other drivers, who joined on 28.8.2009. Although, a plea has been taken by the respondent that the services of the petitioner had to be dispensed with for want of funds and post but this plea gets negated when this fact is considered that even after dispensing with the services of the petitioner, the respondent department has recruited other drivers, as stated by Shri B.S Guleria (RW-1), without considering the name of the petitioner. In this way, there is also violation of section 25 H of the Act. I, disagree with the Ld. DDA for the respondent, that the services of the petitioner had been dispensed with in terms of appointment letter dated 5.9.1999. It is to be noted that the petitioner had continued to remain in service till 25.8.2000, when his services were firstly disengaged. The perusal of appointment letter goes to show that the services of the petitioner had not been dispensed with, on the completion of 89 days, as per its terms and conditions but were dispensed with on 25.8.2000, when he had already completed more than 240 days and that too without notice and payment of compensation. Thus, the respondent, itself, has failed to show that the services of the petitioner had been terminated/dispensed with, on the completion of 89 days, as per the terms and conditions stipulated in his (petitioner's) appointment letter. Since, he (petitioner) had completed 240 days in the twelve calendar months preceding his termination, the respondent department was required to comply with the mandatory provisions of section 25F of the Act. Consequently, by holding that the services of the petitioner were illegally terminated/dispensed with w.e.f. 25.5.2006, without complying with the mandatory provisions of the Act, my answer to this issue is in "Yes".

Issue No.2

14. It has not been alleged by the petitioner that he is unemployed. In order to claim back wages, it was incumbent upon the petitioner to have proved this fact that after his termination, he has not been gainfully employed. For want of oral as well as documentary evidence, he has failed to prove this fact. *It has been held by the Hon'ble Supreme Court in 2010 (I) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla* that "*full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry*". In view of the law laid down by the Hon'ble Apex Court, I am of the view that the petitioner is not entitled to back wages. However, since his services had been terminated in contravention of the provisions of the Act, I hold that the petitioner is entitled to reinstatement in service with seniority and continuity but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue No.3.

15. It is not understandable as to why this reference is not maintainable, particularly, when it has been made to this Court by the Labour Commissioner. Apart from it, the learned DDA for respondent could not explain as to why this reference is not maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 25.5.2006. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 20th July, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
*Presiding Judge, Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 111 of 2001.
Instituted on 23.6.2001.
Decided on 15.7.2010.

VS.

The Managing Director, HP State Civil Supply Corporation Ltd., Kasumpati Shimla-9.

. Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Devinder Ghosh, Advocate.
 For respondent: Shri Peeyush Verma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the statement of Managing Director, HP State Civil Supply Corporation Ltd., Kasumpati Shimla-9 that the workman Shri Ajay Sood himself left his job in November, 1996 is legal and justified? If not to what relief of service benefits and amount of compensation the above workman is entitled to?”

2. Briefly stated facts of the case are that consequent upon an interview which was held on 16.5.1995, the petitioner was selected for the post of Pharmacist, on contract basis, for sale counter of medicines in Deen Dayal Upadhyा Hospital (hereinafter referred DDU/Hospital) vide letter dated 22.7.1995. On 27.7.1995, he joined in the office of respondent as per agreement dated 22.7.1995. Since, the shop in the said hospital was not in existence and was yet to be constructed, as such, the petitioner was engaged on a consolidated salary of Rs. 2,000/-, at the head Office of respondent. He was also asked to look-after the work of construction of the shop which was being constructed through HP OWD. In order to bring the shop in existence, the petitioner played a dominate role, apart from his routine office duties, such as, to clear the documents and material for transport, packing and dispatch of medicines boxes to various destinations and preparing of invoices.. Even, the drug licence for the said purpose was also issued to him, by the corporation. It is further averred that the petitioner had accepted the offer, for the reason that the respondent had assured that he was to be engaged in the medicine shop counter, whenever, the shop would be ready and that he was to be paid on commission basis. However, after some time, the attitude of the respondent changed and it started to blame the petitioner in one way or the other. Initially, he could not understand the reason for such change in the attitude but later on came to know that the shop had been allotted to a son of senior officer of HP Secretariat and that too without getting his name sponsored through Employment Exchange. On the contrary, his (petitioner's) appointment had been made through employment exchange. Although, he had worked continuously and without interruption till October/November, 1996 but suddenly, the respondent stopped his wages w.e.f. November, 1996 onwards and terminated his services without notice, in violation of the provisions of the Industrial disputes Act, 1947 (hereinafter referred Act). He had also completed 240 days. Even for the month of November, 1996, he had not been paid salary. Since, the respondent has appointed a new workman, in his place, the same is in violation of section 25G of the Act. It is further asserted that he (petitioner) be also granted parity in pay scale with other similar situated Pharmacists, working under the respondent. Since, his services had been terminated in violation of the provisions of the Act, he deserves to be reinstated alongwith all the consequential benefits.

3. The petition has been contested, on having raised various preliminary objections including maintainability & jurisdiction. On merits, it has been asserted that although the petitioner was appointed on 22.7.1995, on contract basis, for a period of one year, but he was found to be negligent and irresponsible in the performance of his duties. Moreover, memos dated 3.11.1995, 14.11.1995 and 18.1.1996 had been issued to him but he failed to reply the same. Thereafter, a review was conducted regarding his work and performance and vide report dated 16.4.1996, it was reported that he was not at all reliable and could not be entrusted higher responsibilities such as the charge of medicine shop, where huge funds and prestige of the respondent is at stake. Thus, a show cause notice was issued to him vide memo dated 4.11.1996, to which the petitioner replied on 23.11.1996. Thereafter, the matter was reported to Shri S.L Bragta (Manager Medicine) for enquiry and as per the report, submitted by him (S.L Bragta), it was found, that the petitioner had failed to discharge his duties, satisfactorily, from the very beginning and further that taking into account his conduct, at medicine shop, the same could not be entrusted to him. In these circumstances, the respondent had been left with no other alternative but to allot the retail out let to some other eligible person. It has been specifically denied that he (petitioner) had worked, continuously, from his joining till October/November, 1996. To the contrary, he had absented himself from duties and also failed to respond to any of the show cause notices which were issued to him and finally abandoned the job, in the month of November, 1996. Other allegations denied.

4. By filing rejoinder, the petitioners have reiterated their own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 9.1.2005.

1. Whether Shri Ajay sood left the job, on his own, in November, 1996 as per statement of respondent? If so, its effect? .OPP.
2. If issue no.1 is not proved in affirmative, whether the petitioner is entitled for any relief? .OPP.
3. Whether the petitioner is not a workman and the petition is not maintainable? .OPR.
4. Relief.

6. I have heard the learned counsel for parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 No
 Issue no.2 Entitled to reinstatement in service with seniority and continuity but without back wages.
 Issue no.3 No.
 Relief. Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue No.1

8. From the reply which has been filed by the respondent, it is highlighted that an enquiry had been got conducted against the petitioner from Shri S.L Bragta and that as per report, submitted by him (S.L Bragta) the charges against the petitioner had stood proved to the effect that he had failed to discharge his duties, satisfactorily, from the very beginning. At this stage, I would like to observe that although a show cause notice had been issued to the petitioner vide memo dated 4.11.1996, the copy of which is Ex. RF and that a reply to this notice had been filed vide Ex. RG which is dated 18.11.1996/23.11.1996 but there is no material, on record, whatsoever, that said S.L Bragta had conducted the enquiry against the petitioner in accordance with the rules by following the principles of natural justice. Even, the respondent has not examined Shri S.L Bragta who had been appointed as an Enquiry Officer, as stated by Shri K.D Sharma (RW-1). The examination of Shri S.L Bragta was very essential because it was he, who could have stated that what procedure was to be followed in order to enquire into the alleged charges, levelled against the petitioner and as to whether, he had been afforded an opportunity to get engaged the services of a person, of his own choice, in order to defend himself and further that as to whether the petitioner had been given proper opportunity to cross examine the witnesses. At this stage, I may point out that although, an enquiry report has been brought, on record, which is Ex. RJ but the record, pertaining to the enquiry proceedings, has not been filed. From the record, pertaining to the enquiry proceedings, it could have been known by this Court as to whether the Enquiry Officer had followed the principles of natural justice or not. The statement of Shri K.D Sharma (RW-1) further goes to show that a show cause notice, copy of which is Ex. RK, had been served upon the petitioner to give his version on the enquiry report, Ex. RJ and that in pursuance to that notice, he had filed reply vide Ex. RL but on the record, there is no such material which could go to show that as to what action was taken by the disciplinary authority (Managing Director) against the petitioner, on the basis of enquiry report, on having considered the reply, Ex. RL, which was filed by the petitioner. It has been stated by Shri K.D Sharma (RW-1) that vide order Ex. RM, the services of the petitioner were dispensed with, with immediate effect but the perusal of this order goes to show that as per it, the petitioner had been ordered to make the payment of the salary for the month of November, 1996 for 17 days by getting deducted his advance amount. From this order, Ex. RM, it cannot be said that the services of the petitioner had been terminated/dispensed with, on the basis of enquiry report, Ex. RJ.

9. Now, on having regard to the statement of Shri K.D Sharma (RW-1), I would like to point out that it is not the stand of the respondent, as taken in the reply, that the services of the petitioner had been terminated or dispensed with, consequent upon the domestic enquiry, which was got conducted against him. On the contrary, it has been specifically mentioned in para no.5 of the claim petition that in the month of November, 1996, the petitioner had finally abandoned the job. It is further to be noticed that the reference which has been made to this Court is also to this effect as to whether the petitioner had left the job in the month of November, 1996 and that to this effect, the statement of M.D is legal and justified. **The issue under discussion and decision is also to this effect as to whether the petitioner had left the job, on his own, in November, 1996 as per the statement of the respondent.** Now, when the statement of Shri K.D Sharma (RW-1), is tested in respect of this aspect of the case, it is revealed that he has not stated even a single word that the petitioner had left the job, on his own, in the month of November, 1996. As already referred, his version is to this effect that on the basis of enquiry which was got conducted from Shri S.L Bragta, his (petitioner) services were dispensed with, with immediate effect, vide order Ex. RM. I may make it clear that his such version that the services of the petitioner had stood dispensed with vide order Ex. RM, is not in consonance with the reference which has been made to this Court and the stand of the respondent as taken in the reply.

10. When, regard is given to the evidence of petitioner (PW-1), it is revealed that he has supported all the material facts including that in the month of November, 1996, the respondent had stopped paying him salary/wages despite the fact that he kept on working till July, 1997, when his services were terminated. He further made it clear that neither he had been given any notice nor paid compensation after November, 1996, when his pay was withheld and that he was stopped from doing his work, including to mark, attendance despite his requests.

11. **The statement of petitioner (PW-1) clearly goes to show that he had not abandoned the job in the month of November, 1996.** On the contrary, it has been specifically stated by him that without any notice and compensation, the respondent had stopped paying him salary/wages after November, 1996 and that he was also stopped from doing his work, including to mark his attendance. He also stated this fact that when he was working in the Head Office, the respondent appointed someone else in the retail outlet. From his such version, it is highlighted that the respondent has engaged another person in place of the petitioner. Even, from the reply, which has been filed by the respondent, it is quite evident that some other person had to be engaged for the reason that the petitioner had finally abandoned his job in the month of November, 1996. In the cross examination, Shri K.D Sharma (RW-1), has expressed his ignorance that Shri Sanjeev, Pharmacist, had been taken into service without his name having been forwarded by the Employment Exchange and further that he (Sanjeev), who has been appointed at DDU Shop, is the son of some officer of HP Secretariat. Here, I would like to say that although this is not a fact in issue as to whether the petitioner had completed 240 days in the twelve calendar months preceding his alleged disengagement/termination, in the month of November, 1996 and that juniors to him have been engaged by the respondent but since, evidence in this regard has come and further that the services of the petitioner were terminated without notice and compensation, the same has been dealt with by me in order to show that there has also been violation of the provisions of the Act while disengaging the services of the petitioner. I have already stated above, that as far as the alleged abandoning of job by the petitioner, in the month of November, 1996, is concerned, there is no evidence, whatsoever, on record, and for this reason, the respondent, upon whom the onus of this issue lies, has failed to prove it, to which my answer is in "No".

Issue No.2.

12. Now, it is required to be ascertained as to what service benefits the petitioner is entitled to. Neither in the petition nor in his statement, before this Court as PW-1, it has been stated by the petitioner that he is not gainfully employed. Before his termination, he had worked for more than one year. In this way, having regard to the short period, he had remained in job with the respondent and also that he has failed to prove that he is not gainfully employed after his termination, I am of the view that he is not entitled to be granted back wages. However, since his services had stood dispensed with in the month of November, 1996 in contravention of the provisions of the Act, as held by me, while deciding issue no.1, the petitioner is held entitled to seniority and continuity in service. Thus, my answer to this issue is in "Yes" accordingly.

Issue No.3.

13. To prove this issue, the respondent has not led any evidence. When regard is given to the statement of Shri K.D Sharma (RW-1), it is quite apparent that he has not stated to this effect that the petitioner was not a workman. Moreover, no such material has been brought, on record, which could show that the petitioner was doing supervisory job and that he was the controlling authority of some workers. Similarly, the respondent has further failed to show/explain as to why this petition is not maintainable, which has been filed, consequent upon the reference having been made to his Court. Thus, I hold that the respondent has failed to prove this issue to which my answer is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service with seniority and continuity but without back wages w.e.f. 1.12.1996. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 15th July, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 112 of 2007
 Instituted on 24.9.2007.
 Decided on. 1.7.2010.

Bhoop Ram S/o Shri Anokhi Ram R/o Village Chamayana, P.O Kamlanagar (Bhatta Kuffer) via Sanjauli,
 Shimla-6. .Petitioner.

VS.

The Commissioner, Municipal Corporation Shimla-171001. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Shashi Shirshoo, Advocate.
 For respondent: Shri Himender Chandel, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of services of Shri Bhoop Ram S/o Shri Anokhi Ram workman by the Commissioner, Municipal Corporation, Shimla-171001 w.e.f. 22.9.2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. Briefly, the case of the petitioner is that, initially, he had been engaged as daily wage beldar with Nagar Panchyat Dhali which got amalgamated with Municipal Corporation, Shimla (hereinafter referred as respondent) on 27.2.1997 and accordingly, his services were taken over. Since, Jan.1997 till 22.9.2004, he worked continuously and completed 240 days in each calendar year. Since, he (petitioner) had fallen ill, on 20.9.2004, for this reason, he could not attend his work with the respondent. Regarding his illness, he had informed the concerned Junior Engineer, It is averred that w.e.f. 23.9.2004 to 20.4.2005, he had remained ill but was not allowed to join the work despite the fact that on 23.4.2005, he had made a request, in this regard, in writing. Neither, he had been served any notice under section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act) nor was paid retrenchment compensation. Moreover, no enquiry was conducted against him, before terminating his service. It is further asserted that many juniors to him are still in job. Since, his services had been terminated, in violation of the Act, he deserves to be reinstated with all the consequential benefits.

3. Petition has been contested on having raised various preliminary objections including maintainability. On merits, it has been admitted that the petitioner had remained engaged as daily wage beldar with the respondent w.e.f. 1997 to 2004 but it has been denied that he had completed 240 days in each calendar year. It has further been denied that he had fallen seriously ill after 22.9.2004 and that on 23.4.2005, he had given in writing for getting his services reengaged. In fact, he had left the job, on his own, and that his services had never been terminated. Other allegations denied.

4. No rejoinder filed. Pleadings of the parties gave rise to the following issues which were struck on 5.9.2009.

1. Whether the termination of services of Shri Bhoop Ram petitioner by the Commissioner MC Shimla w.e.f. 22.9.2004 without complying with the provisions of ID Act, 1947 is improper and unjustified as alleged? .OPP.
2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to? .OPP.
3. Whether the claim of the petitioner is not maintainable as alleged? .OPR.
4. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 Yes
 Issue no.2 Entitled for reinstatement in service with seniority and continuity but without back wages.
 Issue no.3 No.

Relief. Reference answered in favour of the petitioner and against the respondent, per operative part of award.

Reasons for findings

Issue No.1

7. Admittedly, the petitioner had remained engaged as daily wage beldar with the respondent w.e.f. 1997 to 2004, when his service were allegedly terminated. The contention of the petitioner is that in each calendar year, he had completed 240 days and that without complying with the provisions of section 25F of the Act, his services were terminated. It has also been maintained by him that his juniors are still in service.

8. The evidence of the petitioner (PW-1), is to this effect that since, he had fallen ill on 22.9.2004, he could not attend his duties and for this reason, his services were terminated on 22.9.2004. Although, he had completed 240 days, in every calendar year, preceding his termination and that without conducting domestic enquiry, his services were terminated. Juniors to him, Kamlesh, Roshni and Bimla are still continuing with the respondent. On having recovered, from illness, he had filed an application for his reengagement, along-with copy of medical certificate mark A, but of no avail. In the cross examination, he denied of not having completed 240 days in twelve calendar months preceding his termination.

9. According to Shri Rakesh Verma (RW-1), the petitioner had worked as daily wage beldar with the respondent w.e.f. Jan. 1997 till September, 2004, when he left the job, on his own, without any information. Ex. RA is his mandays chart. In the cross examination, he admitted that telephonically, the petitioner had informed the concerned JE regarding his illness w.e.f. 23.9.2004 to 20.4.2005. He further admitted that he (petitioner) worked continuously till September, 2004. No notice was issued to him to join the duties.

10. Ex. RA, is the mandays chart of the petitioner. From this document coupled with the statement of the petitioner (PW-1), it stands duly proved that he had completed 240 days in the twelve calendar months preceding his termination. Undoubtedly, the plea of the respondent is to this effect that the petitioner had abandoned the job but as stated by RW-1 (Rakesh Verma) he (petitioner) had not been issued any notice to join the duties. In case, the petitioner had abandoned the job, it was required of the respondent to have issued him notice to resume the duties. Moreover, it was also obligatory upon the respondent to have called for the explanation of the petitioner, if he had wilfully absented. The version of the petitioner (PW-1) that his juniors namely Kamlesh, Roshni & Bimla are still in service, further, goes to show that his services have been terminated in contravention of the provisions of section 25G & H of the Act. Since, the respondent has failed to establish that the petitioner had abandoned his job, his alleged termination w.e.f. 22.9.2004 is required to be held illegal and unjustified, in violation of the provisions of section 25F, 25G & H of the Act. Consequently, my answer to this issue is in "Yes".

Issue No.2

11. Since, the petitioner has failed to prove that he has not been gainfully employed after his termination, I, without hesitation, hold that he is not entitled for back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service, without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue No.3

12. Consequent upon the reference, which has been made to this Court, the petitioner has filed statement of claim. It is not understandable as to why the claim of the petitioner is not maintainable in the present form. Moreover, at the time of arguments, it could not be explained, on behalf of the respondent, as to why, the claim of the petitioner is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 22.9.2004. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 1st July, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 143 of 2004.
Instituted on 21.12.2004.
Decided on. 21.7.2010.

Sanjay Jadhav, Shimla Sanitarium & Hospital, Carton House Chaura Maidan, Shimla-171004. . .Petitioner.

VS.

The Business Manager, Shimla Sanitarium & Hospital, Carton House, Chaura Maidan, Shimla-171004. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Surinder Thakur, Advocate.
For respondent: Shri Adarsh Vashistha, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Sanjay Jadhav ex-Ophthalmic Assistant by the Business Manager, Shimla Sanitarium & Hospital, Carton House, Chaura Maidan, Shimla-171004 w.e.f. 1.8.2003 without complying the provisions of the Industrial Disputes Act 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. Briefly stated facts of the case are that the petitioner had been appointed as Ophthalmic Assistant on 5.5.1992. He was being paid Rs. 3,750/- per month on account of wages including allowances. Besides, he had also been allotted two room set, by the respondent, at place, known as Jagdish Niwas, Meseum Road, Shimla -4, in lieu of employment. Further, electricity bills of his residence were also being refunded by the respondent and a token amount of Rs. 50/- was being deducted from him. 60% school fee of his children was also being reimbursed by the respondents besides medical reimbursement to the extent of 90% to the petitioner and 75% to his wife and children. It is alleged that during the course of his employment, a letter dated 18.4.2002 was issued to him vide which false allegations were made to malign his character. He refuted those allegations, vide letter dated 18.4.2002. Since, the respondent did not take his such reply, in a good taste, and with a view to punish him, changed his designation and assigned the duties of such nature to which he was alien. Still, he started performing newly assigned duties diligently but the respondents were determined to harass him on one pretext or the other. Vide letter dated 8.5.2002, he was also charged for dereliction of duties. Even, thereafter, the respondent kept on harassing him. Vide letter dated 26.6.2002, he had made a representation wherein it was requested that letter dated 29.4.2000 and two other letters be withdrawn. The copy of that representation was also endorsed to the concerned Conciliation Officer for peaceful redressal of the dispute. Although, the Conciliation Officer had taken cognizance of his complaint and was seized of the matter but despite that his services were terminated vide letter dated 31.7.2002. Feeling aggrieved by such termination, he had filed an application which was caused to be registered as App. No. 116/2001, on 9.8.2007, before this Court. After having recorded the evidence of both the parties, the application was fixed for final arguments. Since, in the intervening period, the appropriate government had made a reference to this Court and that the dispute, which had been raised by the petitioner in the said application no. 116/2001 and in the reference, which was made to this Court, was identical/similar, he had filed a misc. App. No. 58/2004, with the prayer that the reference, made to this Court by the appropriate government, be answered on the basis of the complaint, which he had also filed. Consequent thereupon, vide order dated 4.3.2005, he was directed to file statement of claim. Against the aforesaid backdrop, the petitioner has alleged his termination order dated 31.7.2002, to be vindictive and malicious and for this reason, liable to be set aside, besides, reinstating him with all the consequential benefits.

3. The petition has been contested on having raised various preliminary objections including maintainability and that the respondent is a charitable organization and that the petitioner does not fall within the

definition of workman. On merits, it has been denied that the petitioner had been engaged as an ophthalmic assistant. In fact, his appointment was in various capacities including to work as receptionist and helper in the dental department. It has been denied that letter, dated 18.4.2002, had been issued with a view to malign the character of the petitioner. Since, the petitioner was found to have indulged in recycling the medicines by selling them to the chemists and that there had been confirmed reports received from various patients, the aforesaid notice dated 18.4.2002, had been issued to him. It has been denied that order dated 24.4.2002, was passed with a view to punish the petitioner. The said order had been passed as a temporary arrangement with a view to facilitate the proper working of the hospital. It is further denied that the designation and duties of the petitioner were changed with malafide intention. The same had been done in consonance with the rules of the hospital, as per which, employees of the hospital, including the petitioner, are required to do work as per the requirements of the hospital and as such they can be deployed wherever their services are needed by the employer. Since, the petitioner did not perform his duties diligently, the respondent was compelled to issue him letter dated 8.5.2002. It has been denied that the petitioner had made representation vide letter dated 26.6.2002. Other allegations denied.

4. Before, I proceed further, it is expedient to make it clear that initially, the petitioner had filed an application under section 33A of the Industrial Disputes Act, 1947 (hereinafter referred Act) which was registered as application no. 116/2001. In that application, both the parties had led evidence and that when the same was fixed for arguments, a reference was received in this Court and accordingly, as per the statement, made by Shri Hem Raj, Authorized Representative of the petitioner, that application stood dismissed as withdrawn vide order dated 4.3.2005. Thereafter, the petitioner filed statement of claim and reply was filed by the respondent. I may further like to make it clear that as per separate statement of the petitioner, recorded on 1.7.2005, he tendered in evidence Ex. P-1 & Ex. P-12, which he had already led/adduced in the aforesaid application, under section 33A of the Act (App. No. 116/2001). It is further required to be clarified that as per this application, the petitioner had filed the copies of the statement of Shri Padam Dev (PW-1), Shri Sanjay Jadhav (PW-2), Shri Shekhar Chand (RW-1) and Shri Sanjay Bhagra (RW-2), which were recorded in the said application (App. No. 116/2001). Whereas the petitioner had relied upon the aforesaid evidence Ex. P-1 to Ex. P-12, including the copies of the statements of the witnesses as recorded in the earlier application no. 116/2001, the respondent led fresh evidence by examining Sanjay Bhagra (RW-1) and Shekhar Chand (RW-2), on 22.7.2005.

5. To the reply, which has been filed by the respondent, no rejoinder was filed. The pleadings of the parties, gave rise to the following issues, which were struck on 10.6.2005.

1. Whether the petitioner is entitled for the relief(s) claimed in terms of reference?	. .OPP.
2. Whether the petition is not maintainable?	. .OPR.
3. Relief.	

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 Yes

Issue No.2 No.

Relief. Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue No.1

8. Admittedly, the petitioner had been engaged/appointed on 5.5.1992 as Ophthalmic Assistant. There is also no dispute, between the parties, regarding his wages and other allowances/perks, which he was being paid. The contention of the petitioner is to this effect that in order to malign his character, the respondent had issued a letter dated 18.4.2002, to him, which he had replied but despite that, as per letter dated 24.4.2002, the copy of which is Ex. P-3, his services were changed by directing him to take over the charge of supervisor of the hospital hygiene and cleanliness services. By way of additional responsibility, he was also directed to work on the hospital maintenance programme with Mr. Lekh Ram. At this stage, I would like to point out that before changing the duties of the petitioner, no notice, whatsoever, had been issued to him. The plea of the petitioner is to this effect that despite the new assigned work, he kept on doing the work of Ophthalmic Assistant, for which he was appointed by the respondent.

9. In the statement of the petitioner, which is Ex. P-10, he has supported his case, on all material, particulars including that after his duties were changed vide letter dated 19.4.2002, he started performing the new duties but even then, the respondent framed allegations against him vide letter Ex. P-4 (Ex. P-5). Another letter was issued to

which he had filed reply and also representation against changing his service conditions vide Ex. P-6 (Ex. P-7), the copy of which was also endorsed to Labour-cum-Conciliation Officer for settlement of dispute. Vide letter Ex. P-7 (Ex. P-8), the conciliation proceedings were started and during the pendency of those proceedings, his services were terminated vide letter dated 31.7.2002, copy of which is Ex. P-8 (Ex. P-9). No enquiry had been conducted by the respondent into the charges, before terminating his services. Even his explanation had not been called for.

10. The statement of Shri Sanjay Bhanger (RW-1) is to this effect that the petitioner had been engaged/appointed in the year, 1992 as Ophthalmic Assistant-cum-helper and that he had also been deputed in different departments of the hospital such as receptionist and also supervisor in hygiene and sanitation. W.e.f 1.8.2002, his services stood terminated, by giving one month's salary and notice. Till the date of his termination, no letter had been received from Labour Officer with regard to any dispute. Since, the conduct of the petitioner was not good, many memos and letters were issued besides reprimanding him verbally. The respondent also filed a criminal case against him.

11. According to Shri Shekhar Chand (RW-2), the service conditions of the petitioner were changed vide letter dated 29.4.2002 which is Ex. RW-2/C. The petitioner was put under lay off from 31.7.2002, due to his inefficient work. In this regard, he had been issued a termination letter Ex. RW-1/D and one month's salary was also paid to him.

12. From the evidence, which has been brought, on record, it is abundantly clear that although the petitioner had been called upon to submit his explanation vide Ex. P-1 and that vide Ex. P-4 & Ex. P-5, he had been issued warnings but the respondent has failed to show that before terminating his services vide letter dated 31.7.2002, any domestic enquiry had been conducted against him, in order to prove the alleged allegations/charges, as levelled. Since, the petitioner had been in continuous service of the respondent w.e.f. 1992, his services could not have been terminated as per letter dated 31.7.2002, copy of which is Ex. P-8, on the plea that his services were no longer required. At this stage, I would like to mention that the petitioner has been deprived of his right, to have been afforded opportunity of being heard and also for fair and proper domestic enquiry, before initiating any action against him, by the respondent, in utter violation of the principles of natural justice. It has been held by Hon'ble Apex Court in **D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-I Supreme Court Service Law Judgments -221**. that:

"Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service."

In the instant case, admittedly, no opportunity to defend himself, had been afforded to the petitioner, and no enquiry was held before terminating his service, on the basis of alleged misconduct. However, it is not disputed by the respondent that the petitioner had completed more than 240 working days in a calendar year preceding his termination. No doubt, the respondent tried to establish, on record, that they had the power, under the rules of the hospital, to terminate the services of the petitioner but while doing so, the respondent had not followed any procedure of law. Thus, keeping in view the entire facts and circumstances of the case, I am of the firm opinion that the rules of the hospital must conform with the principles of natural justice other wise the same would become arbitrary, unjust and unfair besides violative of Article 14.

13. In view of my above findings and observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner by the respondent is violative of the Industrial Disputes Act, 1947 as well as principles of natural justice. Hence the petitioner is entitled for the relief(s) claimed, in terms of reference i.e reinstatement in service with seniority and continuity alongwith full back wages. Accordingly, my answer to this issue is in "yes".

Issue No.2

14. Ld. Counsel for the respondent has tried to show that the petitioner does not fall within the definition of workman but in support of his such contention, no evidence, whatsoever, has been led by the respondent. On the other hand, the petitioner has proved, on record, that he had been engaged/appointed as Ophthalmic Assistant on 5.5.1992, and was being paid for the same. Moreover, there is nothing, on record, which could go to show that the petitioner was the Incharge of ophthalmic unit and that he was having the powers to sanction/recommend leave and to assign the duties to the workers. Another stand, taken by the respondent in its reply is to this effect that the respondent hospital is run by a charitable organization for charitable purpose and that the same has been created and designed for nearly spiritual and religious purpose. I find no force in the plea taken by the respondent as it has been admitted by Shri Shekhar Chand (RW-2), that the respondent used to charge the registration fee, besides charging for various medical tests and conducting general surgery and other treatment. He further admitted that the respondent gives salary to the employees and no one is working voluntarily or for honorarium. At this stage, I would like to make it clear that from the statement of Shri Shekhar Chand (RW-2), it is clear that all the employees, working/posted in the respondent hospital, are paid wages/salary for their work and the petitioner was also one of them, whose services had been

terminated/disengaged by the respondent without following any procedure of law. I disagree with the contention of Ld. Counsel for the respondent that this petition is not maintainable.

For my above discussion, I hold that the petition is perfectly maintainable to which my answer is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that the petitioner be reinstated, in service, with seniority and continuity alongwith full back wages, from the date of his illegal termination. Consequently, the reference stands answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 21st July, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA CAMP AT SOLAN

Ref no. 147 of 2007.
Instituted on 14.12.2007.
Decided on 8.7.2010.

Rajiv Kumar S/o shri Kalyan Chand R/o Sheetala Wali Gali, Ward No.1, Nalagarh, District Solan, HP.
. .Petitioner.

VS

The Chief Project Director Mid Hills Water Shed Development Project Solan, District Solan, HP.
. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.
For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Rajiv Kumar S/o Shri Kalyan Chand workman by the Chief Project Director Mid Hills Water Shed Development Project Solan, District Solan, HP w.e.f. 25.9.2005, without complying the provisions of the Industrial disputes Act, 1947 is proper and justified? If not wht relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. Facts, in brief are that, at the first instance, the petitioner had been appointed/engaged as driver, on 3.8.1998, with Integrated Water Shed Development Kandi Project (hereinafter referred as Kandi Project), at Nalagarh and thereafter, he was transferred to Una and then to Solan, during the month of July, 1999. Now, HP Mid Himalayan Project Water Shed Solan (hereinafter referred as Mid Himalayan Project/respondent) is a successor of Kandi Project and for this reason, it is responsible for all the liabilities of Kandi Project including the services of the employees. On 13.6.2000, the services of the petitioner had been illegally terminated/removed. On his having raised an Industrial Dispute, a settlement had taken place and in consequence thereof, he was reinstated, in the service of respondent, on 10.12.2002, with seniority and continuity in service, from the date of his first appointment i.e. 3.8.1998, without back wages. Thereafter, again, his services were terminated, illegally, on 25.9.2005. Although, he was reinstated in the month of July, 2006 (14.7.2006) but the respondent did not care to pay him wages for the intervening period, for which he had been kept out of the work. Since, on 25.9.2005, his services had been terminated, without notice and paying retrenchment compensation, the same was in violation of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act). Further, the respondent retained the services of his juniors and thus, contravened the

provisions of section 25G & H of the Act. Since, his services had been terminated in contravention of the provisions of the Act, he deserves to be awarded seniority and continuity in service along with full back wages for the period w.e.f. 25.9.2005 to 19.7.2006 (**should have been 14.7.2006**).

3. The Petition has been contested on having raised preliminary objections qua maintainability. On merits, it has been asserted that the petitioner had been working as daily wage driver in Kandi Project w.e.f. 24.12.2003 till 25.9.2005, when his services were disengaged, as per the orders received from Project Director (Kandi Project) dated 23.8.2005. The said Kandi Project stood culminated/closed w.e.f. 30.9.2005 and for this reason, as per the decision of the Hon'ble Supreme Court in Ashwani Kumar & others Vs. State of HP decided on 3.1.1996, the employees working therein had to go along-with the closed project. For this reason, the orders, terminating the services of the petitioner are not illegal, unjust and arbitrary. Further, there had been no post of driver available, w.e.f. October, 2005 to June, 2006, with new project i.e Mid Himalaya Project. Before disengaging the services of the petitioner, he had been served with one month's notice vide letter dated 27.8.2005 and for this reason, there have been no violation of the provisions of the Act. It is further maintained that the respondent had not retained any driver when the services of the petitioner were disengaged. Since, the petitioner had not worked with the respondent w.e.f. 25.9.2005 to 13.7.2006, due to non availability of vacancy, for this reason, he cannot be awarded seniority and wages. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 12.11.2008.

1. Whether the termination of services of Shri Rajiv Kumar workman by the Chief Project Director Mid Hills Water Shed Development Project Solan w.e.f. 25.9.2005 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged? .OPP.
2. If issue no.1 is proved to what relief of service benefits and amount of compensation, the petitioner is entitled to? .OPP.
3. Whether the petitioner was engaged as daily wages driver on temporary basis under the Kandi Project w.e.f. 3.8.1998 to 25.9.2005 which came to an end as alleged? .OPR.
4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 Yes.
 Issue No.2 Entitled for seniority and continuity in service but without back wages.
 Issue No.3 Yes.
 Relief. Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue No.1

8. It is not a disputed fact that initially, the petitioner had been engaged as driver at Nalagarh on 30.8.1999 and that he continued as such at different places including Una and Solan till 25.9.2005, when his services stood disengaged. The contention of the respondent is to this effect that since Kandi Project had come to an end, for this reason, the services of the petitioner, including other daily wagers, had to be disengaged. It is also an admitted fact that the Mid Himalaya is the successor of Kandi Project.

9. It has been stated by the petitioner (PW-1), that his services had been terminated on 25.9.2005, without notice and compensation and that his juniors s/Shri Narayan & Kuldeep were engaged and that they are still continuing with the respondent. On 14.7.2006, he was reengaged and continuing till date. In the cross examination, he admitted that after the completion of Kandi Project, the respondent Project came into being. He denied that notice mark X, was served upon him, intimating that his services were no longer required, after the completion of the Project. He admitted that only for the project work, he had been posted/engaged as driver and that Kamlesh Kumar, permanent driver, was transferred from the office of Chief Project Director to the office of C.F Wild Life Dharamshala and that on 11.7.2006, he was asked to report for duty in the office of Chief Project Director. He denied that since he had not worked from 25.9.2005 to 13.7.2006, he is not entitled to seniority and continuity in service.

10. According to Shri K.S Chauhan (RW-1), the petitioner had been served with a notice dated 27.8.2005, intimating that after 25.9.2005, his services would be no longer required as the Project was to come to an end on

30.9.2005 and that the copy of this notice is Ex. RA. W.e.f. October, 2005 to June, 2006, the respondent had no post of driver. In the cross examination, he admitted that Sanjeev Shyam, Afizul Rehman, Ashok Kumar, Azizul Rehman, Rajesh Kumar & Kuldeep Chand were reengaged in the month of October, 2005 (10th to 15th October, 2005).

11. Ex. RB is the settlement, which goes to show that earlier, when the services of the petitioner had been disengaged, he had raised an Industrial Dispute and during conciliation proceedings, a settlement had arrived at and in consonance thereof, his services were reengaged by the respondent w.e.f. 10.1.2002 along-with seniority. In the statement of Shri K.S Chauhan (RW-1), it has come that the petitioner, who had been initially engaged on 3.8.1998 had continued to remain in service till 25.9.2005.

12. It is an admitted fact that on 30.9.2005, Kandi Project had came to an end. According to Shri K.S Chauhan (RW-1), the services of the daily wagers, who had been engaged in Kandi Project, had stood automatically disengaged, on the culmination of the Project including that of the petitioner. From the statement of Shri K.S Chauhan (RW-1), it is further proved that before disengaging the services of the petitioner, on account of the culmination of the Project, a notice dated 27.8.2005, had been served upon him, the copy of which is Ex. RA, intimating thereby that his services were no longer required after 30.9.2005. Since, the petitioner was a daily wager and had been in continuous service w.e.f. 3.8.1998 till 25.9.2005, if his services were required to be terminated, it was obligatory upon the respondent to have issued a notice in terms of section 25F of the Act alongwith to have paid retrenchment compensation, before terminating his services. In the instant case, there is nothing, on record, which could go to show that the respondent had paid retrenchment compensation to the petitioner, before terminating his services. Since, no retrenchment compensation had been paid to the petitioner, on this score, his termination w.e.f. 25.9.2005 was in contravention of the provisions of the Act, particularly, section 25F. Since, the petitioner already stands reengaged w.e.f. 14.7.2006, his another contention that his juniors have been retained in service, does not hold good. Consequently, the termination of the petitioner w.e.f. 25.9.2005, is held not to be proper and justified. Accordingly, my answer to this issue is in "Yes".

Issue no.2.

13. The petitioner had remained out of job w.e.f. 25.9.2005 till 14.7.2006. Now, it is to be ascertained as to what service benefits, he is entitled to. No evidence, whatsoever, has been led by the petitioner in order to show that during the said period, he was not gainfully employed. Definitely, initial onus was upon him, to prove this fact that during the period when his services remained disengaged, he was not doing any work and that for this reason, he was not gainfully employed. Thus, having regard to this fact and also the period, during which the petitioner, had remained disengaged, I am of the view that he does not deserve to be granted back wages, for the period w.e.f. 25.9.2005 till 14.7.2006. However, since, I have already held, while deciding issue no.1 that w.e.f. 25.9.2005, his services had been terminated in contravention of the provisions of section 25F of the Act, as he had not been paid retrenchment compensation, I am of the view that he deserves to be granted seniority and continuity in service w.e.f. 25.9.2005 till 14.7.2006. By holding so, my answer to this issue is in "yes" accordingly.

Issue No.3.

14. In the statement of Shri K.S Chuhan (RW-1), it has come that initially, the petitioner had been engaged on 3.8.1998 at Nalagarh and that till 25.9.2005, he continued to remain in job, with Kandi Project. Moreover, it has also not been disputed by the petitioner that he had not remained engaged as daily wager, during the aforesaid period. Thus, this issue stands proved and to which my answer is in "Yes".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be granted seniority and continuity in service w.e.f. 25.9.2005 till 14.7.2006 but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 8th July, 2010 in the presence of parties counsels.

By ordre,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla
Camp at Solan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

Ref no. 151 of 2007.

Instituted on 14.12.2007.

Decided on. 23.7.2010.

Nokh Ram s/o late Shri Molak Ram R/o Village Kotli, P.O Gumma, Tehsil & District Shimla, HP.

. Petitioner.

VS.

1. State of HP, through its Principal Secretary (IPH) to the government of Himachal Pradesh, Shimla-1.
2. The Executive Engineer, I&PH Division Chaura Maidan, Shimla-4.
3. The sub Divisional Officer I&PH (Mechanical) Gumma Tehsil & District Shimla, HP. . .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.R Sharma, Advocate.

For respondent: Shri Jagdish Kanwar, Ld. DDA

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether termination of the services of Shri Nokh Ram S/o Shri Molak Ram workman by the (1) The Executive Engineer, I&PH Division Chaura Maidan, Shimla-4 (2) The sub Divisional Officer I&PH (Mechanical) Gumma Tehsil & District Shimla, HP w.e.f. 1.12.1998 without complying the mandatory provisions of the Industrial Disputes Act, 1947 whereas the juniors to him are retained by the employer is proper and justified? If not, what relief of service benefits, and amount of compensation, the above aggrieved workman is entitled to”.

2. In nutshell, the case of the petitioner is that initially he was appointed as daily wage beldar at Sub Division Gumma, Tehsil Sunni, District Shimla, HP w.e.f. 1.12.1998 to 30.2.1998 and worked as such, continuously, to the utmost satisfaction of his superiors but despite this fact, w.e.f. 30.11.1998, his services had been disengaged. It is further averred that in each calendar year, he had completed 240 days. Against his oral termination, he had filed an OA no. 3298/1999, before the Administrative Tribunal, which was finally disposed of on 31.8.1998. Moreover, juniors to him namely S/Shri Krishan Dass & others (as mentioned in para 8(b) of the claim) are still working. In this way, his deserves to be reinstated with all the consequential benefits as his termination is in violation of the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act).

3. The claim of the petitioner has been contested on having raised preliminary objections including limitation and maintainability. On merits, it has been denied that he (petitioner) had been engaged on 1.1.1998 and that completed 240 days. In fact, he had been initially employed as casual labourer, on daily wage basis, on 1.6.1998, for cleaning the tanks, alongwith other casual labourers and worked for 138 days. It is further maintained that after the completion of work, he left the job as per understanding which had been arrived at, when his services were engaged, in order to do specific work. It has been denied that he had approached the respondents, for his reengagement and that fresh persons were engaged. Shri Narayan Singh had been reemployed on 1.1.1999 and subsequently S/Shri Thakur Dass and Mehar Singh were transferred to IPH Division no-11, Shimla-3 as well as Water Supply and Sewerage Sub-Division No. III, Shimla-9, from Water Supply Sewerage Division, New Shimla. As far as persons appearing at serial no. 1 to 6, under para no 8 (b) of the claim petition are concerned, they have not been working under respondents nos. 2 & 3 and that the persons at serial no. 7 to 15, are senior to him. Smt Asha Kumari, Shri Pritam and Rewa Shankar (at serial no.16), have not been working under respondent no.2. As far as Shri Joginder is concerned, he was transferred to respondent no.2 by Public Health Sub Division, Dhalli, in the year, 2005. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 25.5.2009.

1. Whether the termination of the services of the petitioner by the respondents, w.e.f. 1.12.1998 without complying with the provisions of Industrial disputes Act, 1947 and after having retaining the juniors to him by the employer is improper and unjustified as alleged? . .OPP.
2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to? . .OPP.
3. Whether the petition is not maintainable? . .OPR.
4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1 Yes.
 Issue No.2 Entitled to reinstatement in service with seniority and continuity but without back wages.
 Issue No.3 No.
 Relief. Reference answered in favour of the petitioner and against the respondent, per operative part of award.

Reasons for findings

Issue No.1

8. The stand of the respondent is that the petitioner was a casual labourer and that he had been engaged for specific work i.e for cleaning tanks etc. and further that he did not complete 240 days and that no junior to him, has been engaged. The respondents, in support of their defence, have examined Shri Ashok Kumar (RW-1), who has stated that in their sub division, the petitioner had been engaged as daily wage/casual worker on 1.6.1998, who only worked upto 30.11.1998 i.e 138 days. His mandays chart is Ex. RA, which is correct as per the original. He had been engaged for cleaning the Tanks, alongwith other workers and that on the completion of the work, he left the work. He had been made to understand that his engagement was for specific purpose. He did not complete 240 days. Vide Ex. RB, the application of the petitioner was dismissed by the Administrative Tribunal. No fresh workers have been engaged by respondent no.3. Being an old worker, Shri Narayan Singh had been reengaged on 1.9.1999, as per working days, Ex. RC. S/Shri Thakur Dass and Mehar Singh, who had been initially engaged by Executive Engineer, Water Supply Sewerage Division, New Shimla, were transferred to IPH Sub Division no.2, Shimla-3, with assets and liabilities in March ,2001 vide office orders Ex. RD to Ex. RD-2. The petitioner has filed his claim after nine years. Persons namely Krishan Dass, Ishwar etc. have not been working with respondent no.2 & 3. As far as Hira Lal, Ritu Raj, Tek Chand, Sagar Dass, Mohinder Singh, Parkash Jai Chand, Narender & Durgesh are concerned, they are senior to the petitioner. Smt. Asha Kumari, S/Shri Preetam & Shankar had never worked under his sub division and S/Shri Joginder & Kewal Ram, were transferred from Public Health sub Division Dhali under IPH Davison no.2 to Sub Division, Gumma, in the year, 2005. The mandays chart of casual workers is Ex. RE. In the cross examination, he denied that the petitioner had been engaged on 1.2.1998. He denied that the petitioner had completed 240 days in the twelve calendar months, preceding his termination, but admitted that no notice and compensation had been given to him.

9. The petitioner (PW-1) has stated that he was engaged as beldar on daily wages with IPH Sub Division Gumma, on 1.2.1998, and worked as such till 30.11.1998, when his services were terminated without notice and compensation. He had completed 240 days in twelve calendar months preceding his termination. Juniors to him S/Shri Joginder Singh, Kewal Ram, Mehar Singh, Thakur Dass and HIra Lal are still in job. Ex. PA is the copy of information sought under RTI Act, from the department. In the cross examination, he denied of having been engaged as casual labourer, on 1.6.1998, and to have abandoned the job as per understanding.

11. The petitioner, as PW-1, has specifically stated that he had completed 240 days in twelve calendar months preceding his termination but when regard is given to his mandays chart, Ex. RA, it stands proved that he only worked for 138 days w.e.f. 1.6.1998 to 11/1998. There is nothing, on record, which could go to show that he had completed 240 days in twelve calendar months preceding his termination. It has been held in **2009 (120) FLR 1007 an Civil Appeal no. 4468 of 2005 of Hon'ble Supreme Court incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others** that:

"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."

12. Another ground on which, the petitioner had challenged his termination is that juniors to him have been retained/engaged by the respondents after his termination. He has named them to be S/Shri Joginder Singh. Kewal Ram, Mehar Singh, Thakur Dass and Hira Lal. Ex. PA clearly goes to show that, except Hira Lal, all the above named persons are junior to the petitioner, who had been engaged by the respondents by ignoring the seniority of the petitioner, who was initially engaged on 1.6.1998. Shri Ashok Kumar (RW-1), has also admitted this fact that S/Shri Joginder & Kewal Ram are junior to the petitioner but explained that they were employed by AE Public health Sub Division, Dhali, in an emergent situation. I would like to mention that if such had been the situation then it was required of the respondents to have given preference to the petitioner before engaging his juniors but in the instant case, no such preference was given to the petitioner which is against the principle of first come last go. In these circumstances, the petitioner has succeeded in discharging the onus which was upon him to prove that persons junior to him have either been engaged or retained by the respondent. When, he (petitioner) succeeds in discharging this onus, it was upon the respondents to have led evidence to the contrary either oral or documentary. Since, the respondents have failed to lead such evidence to disprove the version of the petitioner that his juniors have been retained by the respondents, I am of the firm view that there has been non compliance of the provisions of sections 25G & H of the Act, as per which, the services of the juniors were required to be disengaged than that of petitioner or in case some new persons were to be engaged, the petitioner was required to be given preference. It has been held by our own Hon'ble

High Court, incase titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903.* that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

13. For my above discussion and law laid down by the Hon"ble High Court (supra), I have no hesitation in holding that the services of the petitioner had been terminated/disengaged w.e.f. 1.12.1998, illegally and in an unjustified manner and that too without complying with the provisions of the Act. Accordingly, my answer to this issue is in “Yes”.

Issue No. 2

14. It has not been alleged by the petitioner that he is unemployed. Moreover, in his statement (PW-1), nothing such has come which could go to show that he is not gainfully employed. In this way, having regard to the facts & circumstances of the case and also the period, for which, he had remained engaged with the respondent, I am of the view that he does not deserve to be granted back wages. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that “full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”.*** Consequently, in view of the law laid down by the Hon"ble Apex Court, the petitioner is held not to be entitled for back wages. However, since his services had been terminated in contravention of the provisions of the Act, I hold that the petitioner is entitled to reinstatement in service with seniority and continuity but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue No. 3.

15. It is not understandable as to why this petition is not maintainable, particularly, when it has been filed in pursuance to the reference made to this Court by the Labour Commissioner. Apart from it, the learned DDA for respondent could not explain as to why this petition is not maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in “No”.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 1.12.1998. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 23rd June, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

Ref no. 152 of 2006.
Instituted on 18.11.2006.
Decided on. 1.7.2010.

Padma Ram S/o Shri Magni Ram R/o Village & P.O Khagna, Tehsil Chopal, District Shimla, HP. . .Petitioner.

VS.

The Divisional Forest Officer, Forest Division, Chopal, District Shimla, HP. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Gulzar Rathore, Advocate.
For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of services of Shri Padma Ram S/o Shri Magni Ram workman by the Divisional Forest Officer, Forest Division, Chopal, District Shimla HP w.e.f. 28.8.2003 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to”?

2. In nutshell, the case of the petitioner is that he had initially been engaged as daily wage beldar by the respondent in Chopal Division where he remained as such from 1970 to 1985. Since, he had represented against his termination, he was reengaged in 1990 and worked upto 1995, when his services were again dispensed with by the forest guard without any reasonable cause. On his representation, again, he was reengaged on 20.4.2000 and worked upto 31.3.2001, in nursery plantation work at Khagna. Regarding his illegal termination, dated 31.3.2001, he had approached the Conciliation Officer, Shimla and during conciliation proceedings, the department had agreed to reengage his services, by keeping his seniority intact. Consequent upon such conciliation, which took place on 21.8.2001, he was reengaged. On 27.8.2003, without assigning any reason or issuing notice, his services were again disengaged. It is further averred that juniors to him have been retained by the respondent and that their names are Kamla Devi, Kanta Devi, Het Ram, Ram Lal etc. Since his services had been terminated in contravention of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act), he deserves to be reinstated in service with all the consequential benefits.

3. Petition has been contested on having raised various preliminary objections including maintainability and that the forest department is not an industry. On merits, it has been denied that the petitioner had been engaged as daily wage worker w.e.f. 1970 to 1985. In fact, he had worked with the department w.e.f. 1990 onwards, in Sarain Range. It is further asserted that he had abandoned the job/work, on his own. His services had never been terminated. It has been denied that the juniors to the petitioner have been retained on any permanent work. The persons, as have been named by the petitioner, have been working on casual/seasonal basis but the petitioner refused to work, as such, because he wanted some permanent job, which was not possible for want of budget as well as non availability of the same. Right from his engagement, the petitioner also did not complete 240 days. It has been admitted that on 21.8.2002, he had been engaged for forestry work, pursuance to the conciliation proceedings but he remained on work upto 28.8.2003 and thereafter, did not turn up.

4. No rejoinder filed. Pleadings of the parties gave rise to the following issues which were struck on 6.5.2009.

1. Whether the termination of services of the petitioner by the respondent w.e.f. 28.8.2003 without complying with the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged? ..OPP.
2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to? ..OPP.
3. Whether the claim is not maintainable? ..OPR.
4. Whether the department of forest is not industry as alleged? ..OPR.
5. Whether the petitioner is estopped to file and maintain the petition by his own acts, deeds and conduct as alleged? ..OPR.
6. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 Yes accordingly

Issue No.2 Entitled for reinstatement in service with seniority and continuity but without back wages.

Issue No.3 No.

Issue No.4 No.

Issue No.5 No.

Relief. Reference answered in favour of the petitioner and against the respondent, per operative part of award.

Reasons for findings***Issue No. 1***

7. Undoubtedly, as per the petitioner, he had been initially engaged as daily wage beldar in the year, 1970 and remained as such till 1985 and thereafter he was reengaged in the year, 1990 and remained as such upto 1995. Thereafter, he was again engaged on 20.4.2000 and worked till 22.1.2001. Against his such termination dated 22.1.2001, he had approached the Conciliation Officer and that during conciliation proceedings, the respondent department had agreed, on 21.8.2002, to reengage his services and consequently, he (petitioner) was reengaged on 21.8.2002. As per the contention of the petitioner, his services were again disengaged on 28.8.2003, by the respondent, without assigning any reason. As per the reference, which has been made to this Court, it is required to be ascertained that as to whether the alleged termination/disengagement of the services of the petitioner w.e.f. 28.8.2003, are in violation of the provisions of the Act or not? It is not the case of the petitioner, as set out in the claim petition that, preceding twelve calendar months from the date of his termination, he had completed 240 days. However, when regard is given to his statement before this Court as PW-1, it is revealed that he has stated to have completed 240 days in every calendar year. He has supported this fact that on 21.8.2002, pursuance to the intervention of the Conciliation Officer, he had been reengaged by the respondent and that on 28.8.2003, his services were terminated, without any reason, and without following the provisions of the Act. In the cross examination, he has denied that he never wanted to turn up for seasonal work and that he wanted some permanent work. He further denied of not having completed 240 days in any calendar year and also that no juniors to him have been retained on any permanent work.

8. Shri Parveen Sharma (RW-1) has deposed from the record that the petitioner had joined the department in Feb., 1990 and that in no calendar year, he had completed 240 days. Further his service had been engaged to do seasonal work i.e as fire watcher and further that he was never terminated. Since, he wanted to have permanent job, for this reason, he left the job on 20.8.2003, on his own. In the month of August, 2004, he was called for work but he refused to do so. The department has no job of permanent nature. Kamla Devi, Het Ram, Nihal Singh etc. are junior to him but they are working on seasonal work. In the cross examination, he has stated that the mandays chart Ex. PR-7, is correct as per the original.

9. The perusal of Ex. PR-7, mandays chart, goes to show that the petitioner had not completed 240 days in preceding twelve months from the date of his alleged termination. I may mention that even in his claim petition, the petitioner has not alleged that before his termination, in twelve preceding months, he had completed 240 days. From the evidence, which has been referred to above, it appears that, from time to time, the services of the petitioner were being engaged. In order to take the benefits of section 25F of the Act, it was required of the petitioner to have proved that before his termination, he had completed 240 days in twelve preceding months. Since, he has failed to prove this fact, his alleged termination cannot be said to be illegal and unjustified, for not having complied with the provisions of section 25F of the Act.

10. In his statement, petitioner (PW-1), has deposed that the respondent has retained juniors namely Kanta Devi, Kamla, Het Ram, Nihal Singh, Ravinder Tulsi Ram and Rajesh Kumar. Even Shri Parveen Sharma (RW-1), has admitted this fact that they are working on seasonal work. Although, it is the plea of the respondent that the petitioner had abandoned the job, on his own, for the reason that he wanted to be engaged against permanent work but there is no convincing and reliable evidence in support thereto. The bare statement of Shri Parveen Sharma (RW-1) that he (petitioner) had been called for the work in the month of August, 2004 is not sufficient because the same has not been supported by any documentary proof. I may also point out that there is no such document, on record, which could go to show that in fact, the petitioner had been issued notice to resume his job. When the respondent failed to prove that the petitioner had abandoned the job, on his own, the retaining of his juniors, as mentioned above, has definitely resulted in violation of the provisions of section 25 G & H of the Act, as per which, the petitioner was required to be given preference than his juniors for his reengagement, even if the work was of temporary/casual nature. Consequently, I have no hesitation in holding that since the juniors to the petitioner have been retained/engaged, the termination of the petitioner w.e.f. 28.8.2003, is illegal and unjustified for want of compliance of section 25G & H of the Act and my answer to this issue is in "Yes" accordingly.

Issue No. 2.

11. Since, the petitioner has failed to prove that he has not been gainfully employed after his termination, I, without hesitation, hold that he is not entitled for back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service, without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue No. 3

12. Consequent upon the reference, which has been made to this Court, the petitioner has filed statement of claim. It is not understandable as to why the claim of the petitioner is not maintainable in the present form. Moreover,

at the time of arguments, it could not be explained on behalf of the respondent, as to why, the claim of the petitioner is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in "No".

Issue No. 4

13. An objection has been taken by the respondent that the respondent department is not an Industry but this objection does not hold good in view of the law laid down by the *Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa* in which it has been held that educational institutions and research centres are Industries. It has further been held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of this judgment, it can be safely concluded that the respondent is governed by the Act, especially in case of the daily wage workers. Consequently, my answer to this issue is in "No".

Issue No. 5

15. Although, an objection has been taken by the respondent that the petitioner is estopped from filing the petition due to his act and conduct but in support thereof, no specific evidence has been led. Even, Shri Parveen Sharma, (RW-1), has not stated that the petitioner is estopped from filing the claim, on account of his own act & conduct. Thus, by holding that the petitioner is not estopped from filing this petition, my answer to this issue is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 28.8.2003. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 1st July, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA CAMP AT NAHAN

Ref no. 213 of 2002.
Instituted on 24.7.2002.
Decided on. 27.7.2010.

The General Secretary, Mazdoor Union Sharmik Sangathan Biroja Factory Nahan District Sirmour, HP.
. Petitioner.

VS.

The General Manager, Rosin & Turpentine Factory, Nahan, District Sirmour, HP. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri A.K Gupta, Advocate.
For respondent: Shri Mukul Garg, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the workmen of Rosin & Turpentine Factory, Nahan are entitled to the compensatory allowance w.e.f. 1.10.1985 as given by the Central Government to its employee? If yes, from which date such allowance is admissible to workmen of above Factory?"

"If not, then whether the workmen of above factory are entitled to the compensatory allowance as given by the HP Government to its clerical staff? If so, from which date such allowance is admissible?"

"If not, then what type of compensatory allowance the above workmen are entitled to and from which date?"

2. Consequent upon the aforesaid reference, having been made to this Court, Rosin & Turpentine Factory Union through its General Secy., Shri S.K Kalia (hereinafter referred Petitioner) has filed statement of claim. Briefly stated facts of the case are reads as under:

3. In Rosin & Turpentine Factory at Nahan (hereinafter referred Factory), there are two type of establishments 1. Ministerial establishment governed by the pay and allowances of the Himachal Pradesh Government 2. Industrial establishment, comprising of the industrial workers in the manufacturing process and governed by the central pattern of pay scales and other allowances. As far as the members of the petitioner are concerned, they fall in the aforesaid 2nd category. It is alleged that the Government of India granted **remote locality/special compensatory allowance** (hereinafter referred Special Compensatory Allowance) to the Central Government Employees posted at Shimla and its suburbs @ Rs. 75/- per month (minimum) and Rs. 300/- (maximum) as per pay range of the employees w.e.f. 1.10.1985 and that the said allowance was increased to Rs. 150 per month (minimum) and Rs. 650 (maximum) w.e.f. 1.1.1986, on the revision of the pay scales of the Central Government Employees. Before the **Central Administrative Tribunal** (hereinafter referred CAT), the Central Government Employees, posted at Kasauli, had challenged the notification of the Central Government on the ground that the same was violative of article 14 of the Constitution because the grant of such benefits, only to the employees posted at Shimla, ran counter to the right of equality. The said petition was allowed and thereafter, the Central Government Employees posted at various places of HP, also claimed the said benefits, and that their petitions in this regard were also allowed and they were granted the benefits w.e.f. 1.10.1985. The employees posted, at Nahan, had also claimed the said benefits and they were also allowed the same. MES employees, posted at Nahan, on having filed a writ petition before the CAT, were also granted the benefits. Similarly, the other employees in telephone as well as civilians, posted at the Army Head Quarters, were also granted these benefits. Even, the Nahan Foundry employees, who are about 400 in number, were also granted these benefits, on having approached the Administrative Tribunal. It is averred that the Nahan Foundry employees were also governed by the same terms and conditions as that of the employees of the Factory, at Nahan and that they were also governed by the Central Government pattern of the pay scales and allowances, before their services were taken over by the HPPWD & IPH departments. It is further averred that the ministerial establishment of the Factory is getting compensatory allowance at par with the HP Government employees, w.e.f. 1967, but the same has been denied to the workers of the Factory establishment on the ground that they are governed by the Central Government pattern of pay scales & allowances. This sort of distinction amounts to unfair labour practice because the employees serving in the same establishment, cannot be discriminated on the ground of different establishments. When the Special Compensatory Allowance was granted to the other central Government employees, posted at Nahan, the petitioner also approached the management, for the grant of the same, but nothing was done and ultimately, the petitioner had to approach the Administrative Tribunal of Himachal Pradesh by filing an OA, which was sent to Managing Director as a representation of the petitioner but an adverse order thereto was passed. Feeling aggrieved by that order, the petitioner had approached this Court by filing an application under section 33-C (2) of the Industrial Disputes Act, 1947 (hereinafter referred Act) but the same was dismissed on the ground that the matter could have been agitated by way of dispute. It is further averred that since, the members of the Petitioner are also governed by Central pattern of pay scales and other allowances and that they cannot be denied the said benefits, they are entitled to the benefits of Special Compensatory Allowance at par with the Central Government Employees, posted at Nahan w.e.f. 1.10.1985. In the aforesaid application under section 33-C (2) of the Act, Mr. Reddy, the than General Manager, had admitted that the Factory establishment is also governed by the central pattern of pay scales and other allowances at par with the other Central Government Employees. Against the aforesaid backdrop, a prayer has been made to order the respondent management to pay remote locality/special compensatory allowance to the members of the petitioner at par with other Central Government Employees w.e.f. 1.10.1985 @ Rs. 75 to 300/- per month upto 31.12.1985 as per their pay ranges and Rs. 150/- to 650/- w.e.f. 1.1.1996 with all the benefits incidental thereof.

4. The petition has been contested on having raised various preliminary objections, including maintainability, cause of action and that the members of the union are not workmen as per the Act. On merits, it has been asserted that the employees of the Factory are not at par with Central Government Employees because they are governed by the pay scale pattern, at par with the Ministry of Railways, as per clause 32 of the Standing Order. Further, the ministerial staff working in the Factory is governed by the pay scale of HP Government and that the compensatory allowance, as given by the HP Government, is also being given to them. Since, the Factory workers are on the pattern of Railway workshop for the purpose of pay/allowances, this allowances (compensatory allowance) cannot be given to them. As far as Special Compensatory Allowance is concerned, the same is not admissible to the employees of workshop staff. Further, Ministry of Finance Department of expenditure of Government of India had issued notification dated 31.5.1991 for the grant of special compensatory (remote locality) allowance to only the Central Government Employees posted in HP within the various ranges. As per the said notification, the workers of the Factory are also

drawing remote locality allowance w.e.f. May, 1991 and revised rates from 1.8.1997. Further, all the benefits, according to the aforesaid notification, are meant for Central Government Employees. As far as the members of the petitioner are concerned, they are the employees of State Forest Corporation, drawing pay and allowances on the pattern of Railway Workshop, as per the aforesaid Standing Order. Other allegations denied.

5. Rejoinder not filed. The pleadings of the parties, gave rise to the following issues, which were struck on

1. Whether the workmen are entitled to the compensatory allowance as given by the Central Government to its employees or at par with State Government clerical staff or any other type of compensatory allowance? ..OPP.
2. If Yes, from which date and to what amount the workmen are entitled? ..OPP.
3. Whether the claim of the petitioners is not maintainable in view of objections raised from para 1 to 4 of preliminary objections? ..OPR.
4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 Decided accordingly in Yes.
 Issue No.2 Entitled to revised special compensatory allowances at par with the Central Government Employees w.e.f. 1.10.1985.
 Issue No.3 No.
 Relief. Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue No. 1

8. Admittedly, there are two types of establishments in the Factory i.e ministerial and industrial. It is also not a disputed fact that as far as ministerial establishment is concerned, the same is governed by the pay and allowances of the HP Government. The dispute between the parties is regarding the workmen of the industrial establishment. Whereas the contention of the petitioner is that the employees/workers of the industrial establishment are governed by central pay scale, the defence plea is that they are governed by the pay scale pattern at par with the Ministry of Railway.. It has further been specifically asserted that as far as the grant of Special Compensatory Allowance is concerned, it is not admissible to the Factory workers of Railway workshop. For this reason, the members of the Petitioner cannot be granted Special Compensatory Allowance as the same is not admissible as per the pay scale pattern of the Ministry of Railway. In this way, having regard to the aforesaid rival contentions of the parties, this Court is to determine as to whether the employees of the petitioner are entitled to Special Compensatory Allowance as granted to the employees of Central Government or that they are required to be held entitled to the compensatory allowance as given by the HP Government to its clerical staff or any other type of compensatory allowance.

9. In the statement of Shri Shashi Kant Kalia (PW-1), it has come that earlier the employees of the Factory were being paid compensatory/remote allowance on the Central Government pattern @ Rs. 20/- per month (minimum) and Rs. 60/- (maximum) as per the pay range of the employees. Now, they are demanding this allowance w.e.f. 1.10.1985 on the Central Government pattern as is also applicable to the members of the Petitioner. He further made it clear that the Central Government Employees of the various departments, such as MES, P&T, Army Station Headquarters etc. are getting the aforesaid allowance on the revised rates w.e.f. 1.10.1985. Ex. PW-1/A, is the copy of notification issued by the Central Government. The Central Government Employees posted at Nahan, had approached the CAT in order to claim the aforesaid allowance at par with the Central Government Employees and that their such claim was allowed as per orders, the copy of which are Ex. PW-1/B & Ex. PW-1/C. After the verdict of the Court, the said employees are getting the allowance at the revised rates w.e.f. 1.10.1985. They had also made a representation to the management and in consequence thereof, they were asked to produce some documents, whereby the Central Government Employees posted at Nahan had also been granted the revised rates of the said allowances. Although, the relevant documents had been supplied but nothing was done by the management. The copy of representation is Ex. PW-1/D. In Nahan Foundry, the Jagadhri Railway workshop pattern was applicable and that the employees of the said Foundry were also granted the said allowances w.e.f. 1.10.1985 at the revised rates. The Rules & Regulations in respect of Nahan Foundry Employees are the same as applicable to the members of the Petitioner. The ministerial staff, serving in the same premises, is getting compensatory allowance w.e.f. 1970 @ Rs. 150/- per month (minimum) and maximum as per their pay range of pay scales. The same had been denied to them on the ground that the services of the members of the petitioner are governed by the Central Government Pattern. In the earlier application, which had been filed under section 33-C (2) of the Act, Mr. Reddy, the then General Manager had admitted that the members of the Petitioner are governed by the Central Government pay pattern and allowances.

10. Shri Saleem Ahmed (PW-2) is the General Secy. of the Nahan Factory Union. According to him, they had claimed remote locality allowance/compensatory allowance w.e.f. 1.10.1985, for the reason that they were governed by the Central Government pattern pay scale and allowances and that the same was paid to them @ Rs. 150/- per month (minimum) and Rs. 650/- (maximum) as per pay range. In the matter of pay and allowances, they had similarity with the employees of the Factory, since, both were governed by the Jagadhri workshop pattern/central pattern of pay and allowances.

11. Shri Mohinder Singh (PW-3) a Central Government Employee, has stated that as per notification dated 31.5.1991, the copy of which is Ex. PW-3/A, they were paid the remote locality/compensatory allowance @ Rs. 20/- to 120/- per month as per their entitlement of pay. For getting the same revised, they approached the CAT by filing a petition, titled Sumer Chand & other Vs. Union of India, the copy of which is Ex. PW-1/C, in which CAT directed to revise the allowance at par with the Central Government Employees posted at Shimla and that they were paid revised arrears of allowances w.e.f. 1.10.1985. When the employees of the Factory approached them, they supplied all the relevant documents to the Petitioner, since, they are also governed by the Central pattern of pay and allowances.

12. Shri Balbir Singh (PW-4), is the General Secy. of Mazdoor Union, Rosin & Turpentine Factory Nahan. His version is to this effect that the workers of the union are getting remote locality/compensatory allowance since 1.1.1986, which has not been revised. He further made it clear that the Central Government Employees who have been posted at Nahan are getting the revised rates w.e.f. 1.1.1986 @ Rs. 150/- to Rs. 650/- as per their pay scale. Similarly, the revised rates are being paid to the employees of MES, Post Office, Army Station Head Quarter, Telecom and also Nahan Foundry Employees. In the cross examination, he denied that since, they are the employees of the State Government undertaking, for this reason, they are not entitled to remote locality allowance.

13. PW-5, Shri Brahm Dass, was working in Station head Quarter at Nahan. He says that initially, they were being paid special compensatory/remote locality allowance @ Rs.20-40-60 as per pay range but as per notification dated 6.11.1985, they demanded the rates of allowance at par with the allowance paid to the employees, posted at Shimla. Since, they were not paid/given the revised rates of allowance, they filed a petition before CAT and the same was allowed as per order, the copy of which is Ex. PW-2/A and thereafter, they started getting the allowance at par with the Shimla employees ranging between 150-650 per months w.e.f. 1.10.1986.

14. Shri Swaran Singh (RW-1) General Manager of the Factory has supported this fact that the workers of the Factory are governed by the pay scale of Railway workshop staff and that the members of the Petitioner were appointed as per conditions shown in Ex. RA & Ex. RB. As, the benefits of remote locality/special compensatory allowance has not been extended by the Railway to its workshop staff as per Ex. RB, the members of the Petitioner are not entitled for the same. Further, there have been no instructions to pay this allowance, to the members of Petitioner, by any competent authority. Earlier, this allowance was being paid un-authorizedly, at local level. For its stoppage, in future, necessary steps are required to be taken. In the cross examination, he admitted that audit is conducted every year and the report is furnished to the Head Quarter. He further admitted that remote locality/special compensatory allowance is being paid to the employees serving in Himachal Pradesh.

15. In the statement of Shri Shashi Kant (PW-1), it has come that compensatory allowance/remote locality allowance is being paid to the employees of the Factory but on the old rates i.e Rs. 20 (minimum) and Rs. 60/- (maximum) per month as per their pay scales. Even, it has been stated by Shri Swaran Singh (RW-1) that aforesaid allowance is being paid to the employees of the Factory. However, he has put forth an explanation that the said allowance is being paid un-authorizedly at local level and that in future, necessary steps are to be taken for getting it stopped. At this stage, I would like to mention that if the said compensatory/remote allowance was being paid to the employees of the Factory/Petitioner un-authorizedly, the same was to be pointed out in the audit reports being prepared by the audit staff. In these circumstances, the version of Shri Swaran Singh (RW-1) that the said allowance is being paid to the members of the Petitioner unauthorisedly at the local level, cannot be accepted. The members of the Petitioner has sought their claim for enhancement in the same. As per the revision made by the Central Government, the employees, posted at Nahan are getting revised special compensatory allowance w.e.f. 1.10.1985 on the Central Government pattern pay scales. It has been stated by Shri Mohinder Singh (PW-3) that remote locality/compensatory allowance is being paid to the employees of Nahan Foundry w.e.f. 1.10.1985. He further made it clear that there had been similarity between the employees of the Nahan Foundry and that of the Factory, who are governed by Jagadhri workshop pattern/central pattern of pay allowance.

16. From the statement of Shri Salim Ahmed (PW-2), it is revealed that the employees of Nahan Foundry are also governed by the Jhaddhari workshop pattern and that they are being paid remote locality/compensatory allowance w.e.f. 1.10.1985. This fact has further been supported by Shri Shashi Kant Kalia (PW-1) that the employees of Nahan Foundry, who are governed by the Jhagadhri Railway pattern, are being paid Special Compensatory Allowance w.e.f. 1.10.1985 at the revised rates. Undoubtedly, in the statement of Shri Swarn Singh (RW-1), it has come that the members of the Petitioner are governed by the Railway workshop staff and that as per Ex. RB, they are not entitled for remote locality/special compensatory allowance but in my considered view, on the basis of Ex. RB,

which is an information regarding pay and allowance sought by General Manager Rosin & Turpentine, Nahan (Factory) from Chief Works Manager Jagadhri workshop, the members of the Petitioner cannot be denied the grant of special compensatory allowance, which is being to them at the old rates. Since, the members of the Petitioner had been getting special compensatory allowance and that the same was not being paid to the employees of Jagadhri workshop staff, the same is now required to be revised w.e.f. 1.10.1985 on the Central Government pattern as also made available to the employees of Nahan Foundry, who as per Shri Salim Ahmed (PW-2), are also governed by Jagdhari workshop pattern/central pattern as applied to the central establishment of the Factory, I may also observe that since the ministerial staff working in the Factory is being paid compensatory allowance as per pay scales of HP Government, the members of the Petitioner cannot be denied the payment of special compensatory allowance to them mainly on the ground that they are governed by Jagadhri workshop pattern. It is further to be noted that all the Central Government Employees working at Nahan, are being granted special compensatory allowance at the revised rates w.e.f. 1.10.1985. The employees of the petitioner cannot be discriminated as far as their claim, for the revised Special Compensatory Allowance, as per Central Government pattern, is concerned. Consequently, for my foregoing discussion, I have no hesitation in holding that the members of the petitioner are also entitled for revision of special compensatory allowance w.e.f. 1.10.1985 as given to the Central Government Employees. Accordingly, my answer to this issue is in "Yes".

Issue No. 2

17. While deciding issue no.1, I have held that the members of the petitioner union are entitled to the revised special compensatory allowance w.e.f. 1.10.1985 as per their respective pay scales. Accordingly, they (members of petitioner union) will be entitled to special compensatory allowance w.e.f. 1.10.1985 according to their respective pay scales at par with the Central Government Employees. Thus, my answer to this issue is in "Yes" accordingly.

Issue No. 3.

18. It is not understandable as to why the claim of the petitioners is not maintainable, particularly, when it has been filed in pursuance to the reference, made to this Court, by the Labour Commissioner. Apart from it, the learned counsel for the respondent could not explain as to why this claim/petition, is not maintainable. Accordingly, by holding it to be maintainable, my to this issue is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the Petitioner is allowed and it is ordered that its members be granted Special Compensatory Allowance with its revision from time to time, on the pattern of Central Government Employees, as per their respective pay scales w.e.f. 1.10.1985. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 27th July, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.
Camp at Nahan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 266 of 2002.
Instituted on 9.9.2002.
Decided on 14.7.2010

Gulzar Singh Emp. No. woo25 (medium machine) House no. 2181/B-2. Saini Mohalla Pinjore, District Panchkula Haryana. .Petitioner.

VS.

General Manager, M/s Tafe Tractor & farm Equipment Ltd. (TAEF) Plot no.29-30, Sector-II, Pawranoo, District Solan, HP. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Niranjan Verma, Advocate.
For respondent: None.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of the services of Shri Gulzar Singh Ex Emp. No. W0025 Medium Machine Shop by the General Manager Eicher Demn, Plot no. 29-30, Sector-II Parwanoo, District Solan, HP w.e.f. 30.6.2001, on the findings of enquiry is proper and justified? If not, what relief of service benefits Shri Gulzar Singh is entitled to?"

2. At the very outset, it is worthwhile to point out that initially, the petitioner had filed his statement of claim against General Manager, Eicher Demn Plot no. 29-30, Sector-II Parwanoo-1732000, District Solan, HP (respondent no.1) and M/s Eicher Demn, Ltd. through their Managing Director Eicher House, 12 Commercial Complex, Greater Kailash Complex-II, New Delhi-110048 (respondent no.2) but during the proceedings of the case, an application under section 151 CPC was filed by respondent no.2 on 27.10.2005, for deleting its name and to implead **M/s Tafe Motors & Tractor Ltd.** in its place, on the plea that it (respondent no.2) has been sold by way of slump sale as an ongoing undertaking w.e.f. 1st June, 2005, vide agreement dated 27.5.2005 to M/s Tafe Motors & Tractor Ltd. This application was allowed as per order dated 18.12.2006 and it was ordered that M/s Tafe Motors & Tractor Ltd. be impleaded in place of respondent no.2. **Consequently, the petitioner filed amended memo of parties whereby General Manager, M/s Tafe Tractor & farm Equipment Ltd. (TAEF) Plot no.29-30, Sector-II, Pawranoo, District Solan, HP & another, was impleaded as respondent in place of respondent no.1 & 2, aforesaid, who had earlier been impleaded by the petitioner.**

3. In brief, the case of the petitioner is that he had joined the services of M/s Eicher Demn, Ltd. district Solan now, General Manager, M/s Tafe Tractor & farm Equipment Ltd. (TAEF) Plot no.29-30, Sector-II, Pawranoo, District Solan, HP (hereinafter referred respondent) on 5.8.1990 and worked there till 30.6.2001. When his services were dismissed, he had been working as a Machine Operator with Emp. no. PW0025 and drawing monthly salary of Rs. 8,200/-, (excluding production incentives). On 20.7.2000, a show cause notice had been issued to him by the GM of the respondent alleging therein that while on duty in "G" shift, on 19.7.2000, he had left training at about 12.25 PM and teased Shri Ashok Kumar, a staff member, as „langra" in the tool crib re-sharpening area. It had also been alleged that when said Ashok Kumar resisted and reacted, he (petitioner) slapped him on the face. The said allegation was termed as major misconduct without quoting any specific clause of standing orders of the respondent company. Vide letter dated 31.7.2000, he had replied the said show cause notice, by denying the allegations and explaining that on 19.7.2000, he was on training, being conducted by the management and had no occasion to go to the tool re-sharpening area at 12.20 PM. In the reply, he had also expressed his genuine apprehension that the complaint, wherein such allegations were levelled against him, had been procured one by the vested interest amongst the management officials, who were against him. It has further been averred that despite recommendation of PGI Chandigarh, he was denied light duties despite the fact that he had developed problem in the disk. On having considered his reply, the respondent vide letter dated 1.8.2000, ordered an enquiry, against him, by appointing Shri G.D Maheshwari, their standing counsel, as an Enquiry Officer. He was also put under suspension. In the enquiry, so conducted by said Shri G.D Maheshwari, the management produced the witnesses, of whom none had been employed in the tool re-sharpening area besides producing certain documents. During the course of enquiry, the respondent through witnesses (MW-1 & 2), introduced a new factor that he (Ashok Kumar) was in the tool re-sharpening area to search a reamer at about 12.35 PM on 19.7.2000, as the same was required by the Engineer, Shri Upender Kalia (MW-2) which story was contradicted by said Upender Kalia (MW-2). Another witness, examined by the management was Shri jai Singh (MW-3), who was supervisor in the tool crib department. By examining Shri Vivek Vastav (MW-4) the management tried to prove that he (petitioner) had taken permission from him (MW-4) in order to go to drink water but did not return and that he (petitioner) returned only after tea break. On the contrary, the defence witnesses had stated that he (petitioner) had attended the training at 12.25 PM and did not go out. Despite having been extensively cross examined their testimony could not be demolished. After recording of the evidence, in the enquiry, he had submitted/filed arguments and the basic contradictions, in the evidence of the management, had been pointed out. It is further averred that the Enquiry Officer submitted his report, copy thereof was also sent to him by the respondent, alongwith letter dated 24.3.2001, whereby he had been directed to submit his representation, if any, by 3.4.2001. From the enquiry report, it was found that the Enquiry Officer had totally ignored the basic issue of time and feasibility and possibility of the presence of Shri Ashok Kumar (MW-1) and the petitioner, in the tool re-sharpening area at 12.25 PM on 19.7.2000. In this way, by relying upon the evidence, produced by the management, and ignoring the contradictions which had been pointed out and also the evidence led by the petitioner in defence, the Enquiry Officer gave his report, which was totally perverse and biased one, in favour of the management. To the enquiry report, he had submitted his comments, vide letter dated

9.5.2001 but the respondent vide order dated 30.6.2001, dismissed the petitioner, from service, by concurring with the findings of the Enquiry Officer. Since the management had proceeded with predetermined notion and wanted to get rid of him (petitioner) on one pretext or the other and that the enquiry report was biased, the order of dismissal, dated 30.6.2001, deserves to be set aside by reinstating the petitioner in service with all the consequential benefits.

4. The petition has been contested on having raised various preliminary objections including maintainability and that the services of the petitioner had been dismissed because in the enquiry, his misconduct had been proved to the hilt. On merits, it has been asserted that in the show cause notice, which was issued to the petitioner, there was no requirement to quote the provisions of certified standing orders, especially when the show cause notice, had made it clear that the petitioner was to be provided opportunity to show cause as to why he was not to be proceeded for a major misconduct, in as much as, under the certified standing orders, for having slapped a fellow employee. Since, his reply had not been found satisfactory, it was decided that the matter be enquired into. Thus, Shri G.D Maheshwari was appointed as an Enquiry Officer who conducted a fair and proper enquiry by affording opportunities to both the parties to lead their evidence. The Enquiry Officer, on having considered the evidence, had held that the petitioner had called Ashok Kumar as "langra" and also slapped him. The petitioner had also been given ample opportunity, to plead his case and to lead evidence, by the Enquiry Officer, who had conducted the enquiry in impartial manner and in accordance with the principle of law as well natural justice, equity and fair play. Therefore, the order dated 30.6.2001, which has been passed on the basis of the enquiry report, is most appropriate and suitable penalty has been imposed upon the petitioner. Other allegations denied.

5. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondents (respondent).

6. Pleadings of the parties gave rise to the following issues which were struck on 10.8.2007.

1. Whether the services of the petitioner have been illegally terminated by the respondent without complying the provisions of ID Act, 1947? If so, its effect? ?	. .OPP.
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to?	. .OPP.
3. Whether the petition in the present form is not maintainable?	. .OPR.
4. Relief.	

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1	Yes.
Issue No.2	Entitled to reinstatement in service with seniority, continuity alongwith full back wages.
Issue No.3	No.
Relief.	Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue No. 1

9. Admittedly, the services of the petitioner had been dismissed vide order dated 30.6.2001, which had been passed/issued on the basis of enquiry report of Shri G.D Maheshwari, who had been appointed as an Enquiry Officer to enquire into the charges, levelled against the petitioner. I may like to observe that since the services of the petitioner had been terminated, on the basis of enquiry proceedings, which had been initiated against him, by the respondent management, it was obligatory upon the respondent to have proved/satisfied this court that the enquiry had been conducted against the petitioner in just, fair and proper manner by following the principles of natural justice and also without any bias. In other words, it can be said that the burden lied upon the respondent to have proved this fact that the enquiry had been conducted against the petitioner, strictly, in accordance with the principles of natural justice. However, when regard is given to the material, on record, it is highlighted that no enquiry proceedings were filed by the respondent alongwith its reply and also the report. It is further to be pointed that the evidence of the respondent was closed as per order dated 30.4.2010, for its failure to produce its evidence and also to pay cost of Rs. 1,000/- as per order dated 20.8.2009 whereby, exparte order dated 23.5.2009, had been set aside, subject to payment of Rs. 1,000/-. For the failure of the respondent to lead evidence in support thereof that the enquiry had been conducted by said Shri G.D Maheshwari in accordance with law by following the principles of natural justice and that he was not under influence of the management and for this reason not biased against the petitioner, there is nothing, on record, which could go to show that the Enquiry Officer (G.D Maheshwari) had properly appreciated the evidence of the parties in its true perspective while holding the charges to stand proved against the petitioner for alleged misconduct whereby he

allegedly called Ashok Kumar as “langra” besides slapping him. There is also no material, which could go to show that the Enquiry Officer had made known to the petitioner as to what procedure was to be followed by him while conducting the enquiry. Similarly, there is no statement of the petitioner, having been brought, on record, which could go to show that before starting the enquiry, the Enquiry Officer had made the petitioner known that he had a legal right to take the services of any person, of his choice, to defend himself in the enquiry proceedings.

10. In the statement of petitioner (PW-1), it has come that on 19.7.2001, he was attending a training in the factory alongwith other workers namely S/shri Santokh Singh, Sher Mohd., Rajkumar and Omkar Chand and that no alleged incident occurred at about 12.25. PM. Since, he was undergoing training, he did not face Ashok Kumar. No witness of the management deposed against him. The enquiry report, which was against him, is wrong and false. In the cross examination, he admitted of having been afforded opportunity to make representation against the enquiry report in which he had stated that no fair enquiry had been conducted.

11. According to Shri Daljit Singh (PW-1), he had gone to re-sharpening area to bring the tools i.e 2.65 grooving tools and remained there from 12.15 PM to 1.00 PM. During this period, Ashok Kuamr did not come in tool crib and re-sharpening area.

12. Shri Om Prakash (PW-2) also supports this fact that Ashik Kuamr, who was posted in tool store had not come to the re-sharpening area on 19.7.2000.

13. S/Shri Sher Mohd. & Swaran Singh (PW-3 & 4) have stated to this effect that on 19.7.2000, they were attending a training in the factory alongwith Gulzar Singh (petitioner), Santokh Singh, Raj Kumar, Onkar Chand and that in all 15 to 20 persons, were with them in the training which had three tea breaks from 10.00 AM to 10.15 AM, 11.30 AM to 11.45 AM and 3.00 PM to 3.15 PM. Gulzar Singh had not gone away on that day and he continued to attend the training with them during the whole day.

14. From the evidence, as referred to above, it has come, on record, that on 19.7.2000, at about 12.15 PM, the petitioner was attending the training and that he had not gone away. On the record, the petitioner has brought Ex. PC, reply, which he had filed pursuance to the show cause notice dated 12.7.2000. As per this reply, he had pointed out the various infirmities/contradictions in the evidence of the management witnesses in order to show that the enquiry report was not fair and correct as per the evidence of the parties. Thus, the Enquiry Officer had not given the report, on proper appreciation of the evidence. I may mention that it was incumbent upon the respondent to have brought, on record, the entire proceedings of the enquiry and also the enquiry report, besides having examined the Enquiry Officer (Shri G.D Maheshwari). Moreover, the evidence led by the petitioner has gone un-rebutted. The respondent has also failed to discharge its burden to prove that the enquiry had been conducted against the petitioner in a fair and proper manner and also by following the principles of natural justice. In these circumstances, I have no hesitation in holding that the services of the petitioner had been terminated illegally vide order dated 30.6.2001, passed/issued, on the basis of enquiry report, given by Shri G.D Maheshwari, which, on record, could not be proved to have been made, on the basis of enquiry proceedings, carried out in accordance with the provisions of law as well as principles of natural justice and also in unbiased manner. Consequently, my answer to this issue is in “Yes”.

Issue No. 2.

15. In the statement of petitioner (PW-5), it has come that he is still unemployed. From his such version which has gone unchallenged/un-impeached, it can be said that he is not gainfully employed. Since, I have held under issue no.1, above, that the services of the petitioner had been terminated illegally, he is entitled to reinstatement in service with seniority and continuity alongwith full back wages from the date of his termination. Accordingly, my answer to this issue is in “Yes”.

Issue No. 5

16. Since, the petitioner has filed his claim, in pursuance to the reference having been made to this Court, by the appropriate government, I do not find any reason which could show that this petition is not maintainable. Accordingly, By holding it to be maintainable, my answer is in “No”.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed with the result, dismissal order dated 30.6.2001 is set aside and quashed and the petitioner is ordered to be reinstated in service with seniority and continuity alongwith full back wages from the date of his termination. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 14th July, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref No. 325 of 2001.
 Instituted on 26.12.2001.
 Decided on 6.7.2010.

1. Baldev Singh S/o Shri Shiv Ram R/o Vilalge Bhag Salai, P.O Janedeghat, Tehsil Kandaghat, District Solan, HP.
2. Virender Singh S/o Shri Sewak Ram R/o Village Jadiyal, P.O Nagali via Chail, Tehsil Kandaghat, District Solan, HP.

. Petitioner.

VS.

The Executive Engineer, HP Irrigation & Public health Division, Saproon, District Solan, HP. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.R Sharma, Advocate.
 For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of Shri Baldev Singh S/o Shri Shiv Ram and Shri Virender Singh S/o Shri Sewak Ram daily wages beldar by the Executive Engineer I&PH Division, Solan, HP without any notice and without complying with section 25F/25N of the I.D Act, 1947 is legal and justified? If not to what back wages, seniority, service benefits and relief the concerned workmen are entitled to?”

2. In nutshell, the case of the petitioners (Baldev Singh & Virender Singh), is that they had been engaged/appointed by the respondents in the month of September 1992 & Feb., 1995 respectively and, as such, continued till 1.9.1999, when their services were terminated. It is further asserted that they were not allowed to complete 240 days in any calendar year till they were in the employment of the respondent. Further, during their tenure in employment/service, their conduct was excellent and they had never been issued any show cause notice or warning etc. Since, without having been served with any notice or paying retrenchment compensation, their services had been terminated, the respondent violated the statutory provisions as contained under section 25F & 25N of the Industrial Disputes Act, 1947 (hereinafter referred Act). It has further been averred that the respondent has retained their juniors in utter violation of section 25G & H of the Act. Since, their services had been terminated in contravention of the provisions of the Act, they deserve to be reinstated with all the consequential benefits.

3. Petition has been contested, on having raised various preliminary objections including limitation and estoppel. On merits, although it has been admitted that the petitioners were engaged as daily rated beldars but it has been denied that their services had been terminated. In fact, they had been in the habit of leaving the job, on their own, and for this reason, they never completed 240 days in any calendar year. As and when, they used to approach the respondent department, they were being accommodated and allowed to do work. It has been denied that juniors to them have been retained in service. Since, the petitioners had not completed 240 days of continuous service, there was no need to have complied with the provisions of the Act as alleged.

4. By filing rejoinder, the petitioners have reiterated their own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on.

7. Whether the petitioner has been forcibly terminated by taking his resignation letter dated 13.4.1998 under threat? If so, its effect? .OPP.
8. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? .OPP.
9. Whether the claimant has no locus standi and he is not a workman under I.D Act, 1947 and the petition is not maintainable? .OPR.
10. Relief.

6. Before, I proceed further, it is worthwhile to point out that vide award dated 11.7.2008 of this Court, the claim of the petitioners was dismissed. Against the award, passed by this Court, a writ petition was filed in the Hon'ble High Court (CWP No. 1475 of 2008). As per order dated 20.5.2010, the Hon'ble High Court set aside the award of this Court dated 11.7.2008 and remanded the case to this Court for decision afresh. Para no.3 of the order of Hon'ble High Court is relevant and it is reproduced as under:

"In view of the above discussion, I accordingly hold that the case deserves to be remanded back to the learned Tribunal, who shall consider the question afresh. In case both the parties seek opportunity for leading evidence in support of issue no.4, the same shall be given to them and thereafter, the case shall be decided afresh by the learned Tribunal after hearing the parties. Needless to say, the case is old one and steps shall be taken by the learned Tribunal to dispose of the case within a period of four months from 14th June, 2010, on which date, the parties, through their counsel, are directed to appear before the learned Tribunal. The award passed by learned Tribunal is set aside accordingly. The petition stands disposed of, so also the pending applications, if any."

7. In compliance with the order of Hon'ble High Court dated 20.5.2010, the parties were afforded opportunity to lead evidence and the case was fixed on 29.6.2010. Despite having been afforded opportunity to lead evidence, on issue no.4, as per order of the Hon'ble High Court, both the parties failed to do the needful and accordingly the arguments were heard.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1	No
Issue No.2	No.
Issue No.3	No.
Issue No.4	No.
Relief.	Reference answered against the petitioner, per operative part of award.

Reasons for findings

Issue No. 1

9. Admittedly, the petitioners (Baldev Singh & Virender Singh), had been engaged as daily rated beldars by the respondent w.e.f. 10/1992 and 2/1995 respectively. Their contention is to this effect that although, they had worked continuously, since their engagements till their services were terminated i.e. 1.9.1999, but the respondent did not allow them to complete 240 days, except in the beginning. Their further plea is that since, their juniors have been retained by the respondent, their termination is in violation of the provisions of section 25 G & H of the Act.

10. On the contrary, the defence version is that neither the petitioners have completed 240 days in any calendar year, for the reason that they had been in the habit of leaving the job, on their own, nor juniors to them have been retained in service.

11. While appearing in the witness box as PW-1 (Baldev Singh) and PW-2 (Virender Singh) both the petitioners have supported the facts as narrated in the petition, on oath. They have also stated that during conciliation proceedings, the respondent had filed replies, Ex. P-1 and P-2 alongwith mandays chart (eight leaves) but the entries in those mandays charts are not correct. They have further stated that although they had completed 240 days in each calendar year but their services had been retrenched/terminated, without any notice and compensation. After their retrenchment, the respondent/department had recruited fresh persons namely Medh Ram, Harinder Kumar, Suresh Kumar, Ramesh Kumar and Joginder Singh etc. numbering twenty in all and that they are still continuing in service. In the cross examination, they denied of not having completed 240 days in any calendar year and further that they were not retrenched.

12. According to Shri Ashwani Sharma (RW-1), the petitioners have not completed 240 days in any calendar year and that no fresh hands have been engaged by the respondent. In fact, they (petitioners) had left the job, on their own. The department had not retrenched them. In the cross examination, he denied that after the retrenchment of the petitioners, the department had employed twenty persons but admitted that no notice had been served upon the petitioners qua their absence. Since, the petitioners have not completed 240 days in any calendar year, their seniority was not prepared. From, 1993 upto 1997, the department has not served any letter upon the petitioners for remaining absent.

13. It is to be noted that although, in the petition, it has not been alleged by the petitioners to have completed 240 days in any calendar year, including twelve calendar months preceding their termination, but when they appeared in the witness box, they stated to have completed 240 days in each calendar year of service by further stating that the mandays charts, which had been filed by the respondent, during the conciliation proceedings alongwith replies Ex. P-1 & Ex. P-2 is not correct. I may mention that the petitioners are required to lead evidence in consonance with their pleadings and if their evidence is not in tune with the averments, made therein, the same requires to be discarded. Moreover, if the petitioners had challenged their termination for being in contravention of the provisions of section 25F of the Act, it was required of them to have specifically pleaded that in the twelve calendar months preceding their termination, they had completed 240 days and the respondent had terminated their service without notice and retrenchment compensation. It is true that the petitioners have alleged that the respondent/department had not allowed them to complete 240 days in each calendar year but in support thereof, there is no evidence, whatsoever. Even, the petitioners while appearing in the witness box (PW-1 & PW-2) have not stated even a single word that the respondent, for one reason or the other, had not allowed them to complete 240 days in a calendar year. I may also observe that the petitioners have not filed any document which could go to show that the mandays charts, which are on record, are incorrect. The perusal of the mandays chart of petitioner Baldev Singh, goes to show that in the year 1999, he had worked for 137 days, 1998, 146 days, 1997, 175 days, 1996, 186 days, 1995, 61 days, 1994, 108 days and in the year 1993, 128 days. Similarly, the mandays chart of petitioner, Virender Singh goes to show that in the year 1999, he had worked for 140 days, 1998, 146 days, 1997, 116 days, 1996, 49 days and in the year 1995, 171 days. It has been held by the **Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat V/s Dayabhai Amar Singh** that :

"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

14. In the instant case, from the pleadings coupled with the documentary as well oral evidence, on record, the petitioners have miserably failed to prove that their services had been terminated in contravention of the provisions of section 25F of the Act. For the sake of repetition, it is to be noted that the respondent was required to issue notice or to pay retrenchment compensation to the petitioners, before retrenching their services only if they had completed 240 days in the twelve calendar months preceding their termination.

15. Another ground on which the petitioners have challenged their termination is regarding the contravention of section 25G & H of the Act because as per them, the respondent has retained the services of their juniors. Although, in the petition, they have not mentioned the names of any such persons who are juniors to them and have been retained by the respondent but while appearing in the witness box as PW-1 (Baldev Singh) & PW-2 (Virender Singh), they have named them as Medh Ram etc. as already stated above. They have also made it clear that in all, twenty persons, including the above named, have been engaged by the respondent after their termination and that they are still continuing on the rolls of respondent/department. In the statement of RW-1 (Ashwani Sharma), it has come that the department/respondent has not engaged fresh hands.

16. It is true that both the petitioners have supported this fact that their juniors have been engaged by the respondent after their termination and that they are still continuing in service but in the absence of any documentary proof, their such version cannot be relied upon particularly when RW-1 (Ashwani Sharma) has categorically stated that no fresh hands have been engaged after the retrenchment of the petitioners. In case, juniors to the petitioner had been engaged by the respondent, the petitioners could have taken requisite steps for getting summoned the relevant record from the office of the respondent/department. In the instant case, no such steps were taken. Even, the petitioners failed to bring, on record, any such document which could go to show that the persons junior to them have been engaged after their termination. They also did not examine any such person, in support of their case, who has been junior to them and is still in service. In my considered view, they could have examined any of the aforesaid persons, stated to be juniors to them, in support of their contention that after their termination, the respondent has engaged fresh hands. I may mention that if, for one reason or another, it was not possible for the petitioners to have produced any of the aforesaid juniors, in support of their evidence, they could have taken necessary steps in order to get them summoned with the indulgence of this Court. In these circumstances, I disagree with the Ld. counsel for the petitioners that from the evidence, on record, it stands duly established that after the retrenchment/termination of the petitioners, the respondent/department has engaged fresh hands and for this reason, there has been contravention of the provisions of section 25G & H of the Act. Since, the petitioners have failed to prove the contravention of the provisions of the Act, I, have no hesitation in holding that this issue is not proved and accordingly my answer to this issue is in "No".

Issue No.2.

17. It is not a disputed fact that the petitioners had been engaged as daily rated beldars by the respondent. The petitioners had raised a demand notice and that when no conciliation took place, a reference was made to this

Court by the appropriate government. Since, the reference, so received from the appropriate government, is required to be answered by this Court, it has definitely jurisdiction to adjudicate upon the dispute involved in the same. On the contrary, Ld. Counsel for the respondent could not show/explain as to why this Court has no jurisdiction to decide this case. Accordingly, by holding that this Court has jurisdiction to adjudicate upon the dispute, involved in this case, my answer to this issue is in "No".

Issue No. 3.

18. At the time of arguments, Ld. Counsel for the respondents could not explain as to how this reference is barred by limitation. There lordships of Hon"ble Supreme Court in **(1999) 6 SCC 82, Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another** have held as under:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

19. Consequently, inview of law laid down by Apex Court, I hold that this petition is not time barred to which my answer is in "No".

Issue No. 4.

20. Whereas the contention of the petitioners is that there services had been terminated on 1.9.1999 but the stand of the respondent is that they had abandoned their job. The evidence of Shri Ashwani Sharma (RW-1) is to this effect that the petitioners had not been retrenched but they had left the job, on their own. In the cross examination, he has admitted that no notice had been issued to the petitioners, as and when they absented from their duties. Both the petitioners, PW-1 & PW-2 (Baldev Singh & Virender Singh) have denied that they had left the job, on their own.

21. From the statement of Ashwani Kumar (RW-1), it is not proved that the petitioner had abandoned the job, on their own. In case the petitioners had abandoned their jobs w.e.f. 1.9.1999, it was required of the respondent to have issued them notice to resume the duty/work. As admitted by RW-1, no such notice had been issued to them (petitioners). Apart from this, the respondent has no brought, on record, muster rolls which could go to show that the same had been issued for the month of September, 1999 and subsequent months for the same work and strength of workers including the petitioners. Had the petitioners abandoned their jobs, such muster rolls were required to be issued. In this way, for want of documentary proof and also that there is no corroboration to the statement of RW-1 (Ashwani Kumar), I have no hesitation in holding that the respondent has failed to prove this issue to which my answer is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioners is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 6th July, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

ECONOMICS & STATISTICS DEPARTMENT

NOTIFICATION

Shimla-2, the 1st September, 2010

No. Plg.B(2)5/2004.—In exercise of the powers vested in him under section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 the Governor, Himachal Pradesh is pleased to identify following posts for the purpose of

providing three per cent reservation in direct recruitment to disabled persons in the Economics & statistics Department :-

Sl. No.	Name of the Post	Categories of disable persons for which post is reserved
1.	Research Officer/District Statistical Officer(Class-I)	PD,LV,OA,OL (Partially Deaf, Low vision, One Arm, One Leg)
2.	Assistant Research Officer(Class-II,NG)	PD, LV, OA, OL (Partially Deaf, Low vision, One Arm, One Leg)
3.	Statistical Assistant	OL, LV, HH, OA,BL (One Leg, Low vision, Hearing Handicapped, One Arm, Both Legs)
4.	Investigator	OA (One Arm)
5.	Clerk	OL, OA, LV, HH,B, BL, OAL (One Leg, One Arm , Low vision, Hearing Handicapped, Blind, Both Legs, One Arm one leg)
6.	Stenographers	OL, BL (one Leg, Both Legs)
7.	Peon	HH, LV, OA (Hearing Handicapped, Low vision, One Arm)

The three percent reservation is further to be allocated amongst visually impaired, hearing impaired and orthopedically handicapped categories in the ratio of one percent each w.e.f. 7.2.1996 i.e. from the date of commencement of the Act ibid subject to the availability of the suitable candidates and in case no suitable person is available, the vacancy shall be carried forward in the succeeding recruitment year, and if in the succeeding three years also suitable person with disability is not available, it shall first be filled up by interchange amongst the three categories and only when there is no person with disability available for the post in that year, the Department shall fill up the vacancy by appointing other than person with disability.

The Governor, H.P. is further pleased to declare that in case the appointing agency/ authority is satisfied that the nature of vacancies is such that a given category of person cannot be employed, the vacancies can be interchanged amongst the three categories with the prior approval of the competent authority.

By order,
Sd/-
Principal Secretary.

राजस्व विभाग

अधिसूचना

शिमला — 171002, 8 सितम्बर, 2010

संख्या रैव0बी0एफ(10)295 / 2010.—हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश भू—जोत अधिकतम सीमा अधिनियम 1972 की धारा 5 के खण्ड (ज) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अधिसूचित करते हैं कि मैसर्ज अम्बुजा सीमेंट लिमिटेड द्वारा सहायक कार्यकलाप, मल/कूड़ा पाटन, पुनर्वास एवम् पुनर्स्थापना व अन्य संरचनाएं, ओवर लैण्ड बैल्ट कन्वेयर, पुनर्वास एवम् पुनर्स्थापना, सेफ्टी जोन तथा वैकल्पिक सड़क के निर्माण के लिये मौजा डवारू, ग्याणा, रठोह, कजयारा, कशलोग, फगवाना व छामला, तहसील अर्का, जिला सोलन में धारित की जाने वाली भूमि को हिमाचल प्रदेश भू—जोत अधिकतम सीमा अधिनियम 1972 के उपबन्धों से छूट दी जाएगी। कथित कम्पनी द्वारा

इस प्रकार धारित की जाने वाली भूमि और उपर्युक्त अधिनियम के उपबन्धों के प्रवर्तन से छूट के लिए अधिसूचित की जाने वाली भूमि का विवरण निम्नलिखित प्रकार से है।

मैसर्ज अम्बूजा सीमेंट लिमिटेड द्वारा धारित की जाने वाली भूमि का व्यौरा

तहसील	गांव	खसरा नम्बर	क्षेत्र		उद्देश्य
			बीघा	बिस्वा	
अर्की	डवारू	50 / 44 / 25	03	16	सहायक कार्यकलाप
	ग्याणा	46 / 2	01	07	मल / कूड़ा पाटन
	ग्याणा	960 / 108 / 1	02	00	पुनर्वास एवम् पुनर्स्थापना व अन्य संरचनाएं
	रठोह	312 / 176	01	07	ओवर लैण्ड बैल्ट कन्वेयर
	कज्यारा	246, 247, 248, 250	15	06	पुनर्वास एवम् पुनर्स्थापना
	कश्लोग	433 / 374 / 211	00	03	सेफ्टी ज़ोन
	फगवाना	11	00	17	ओवर लैण्ड बैल्ट कन्वेयर
	छामला	218 / 99 / 3 / 1	04	00	मल / कूड़ा पाटन तथा वैकल्पिक सड़क का निर्माण

आदेश द्वारा,
हस्ताक्षरित / –
वित्तायुक्त एवं प्रधान सचिव।

[Authoritative English Text of this Department Notification Number Rev.B.F.(10)295/2010 dated 8.9.2010 as required under clause (3) of Article 348 of the Constitution of India].

REVENUE DEPARTMENT

NOTIFICATION

Shimla-171002, the 8th September, 2010

No. Rev.B.F.(10)295/2010.—In exercise of the power conferred by clause (h) of section 5 of H P Ceiling on Land Holdings Act 1972, the Governor of Himachal Pradesh is pleased to notify that the land to be held by M/s Ambuja Cements Limited situated in villages Dwaroo, Gyana, Rathoh, Kajyara, Kashlog, Phagwana and Chhamla, Tehsil Arki, District Solan, Himachal Pradesh for Ancillary Activities, Dumping / Storage of Waste Muck, R&R and other infrastructure, OLBC, Safety Zone and Alternative Road shall be exempted from the operation of the provisions of Himachal Pradesh Ceiling on Land Holdings Act 1972.. The details of the land to be held by the said Company and notified to be exempted from the operation of the provisions of the Act ibid are given under:

DETAIL OF THE LAND TO BE HELD BY THE M/S AMBUJA CEMENTS LIMITED

Tehsil	Village	Khasra Number	Area		Purpose
			Bigha	Biswa	
Arki	Dwaroo	50/44/25	03	16	Ancillary Activities
	Gyana	46/2	01	07	Dumping of Waste Muck
	Gyana	960/108/1	02	00	Rehabilitation & Resettlement and other infrastructure

Rathoh	312/176	01	07	Over Land Belt Conveyor
Kajyara	246, 247, 248, 250	15	06	Rehabilitation & Resettlement
Kashlog	433/374/211	00	03	Safety Zone
Phagwana	11	00	17	Over Land Belt Conveyor
Chhamla	218/99/3/1	04	00	Storage of Muck /Alternative Road

By order,
Sd/-
FC-cum-Principal Secretary.